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United States District Court for the Western District of Missouri, Western Division, on November 13, 1979 ..... A188

22. Firestone's Withdrawal of Its Motion for Order Holding John C. Risjord in Contempt, Filed in the United States District Court for the Western District of Missouri, Western Division, on November 30, 1979 ..... A194

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24. Opinion and Judgment of the United States Court of Appeals for the Eighth Circuit, Filed on January 7, 1980 ..... A200

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Relevant Docket Entries.

Entries from Docket in Case No. 79-0086-CV-W-2.

PLAINTIFFS	DEFENDANTS
RODRIGUEZ, LUCIANO, individually and as next friend of Rene Rodriguez.	FIRESTONE TIRE & RUBBER CO. (1) GOODYEAR TIRE & RUBBER CO. (2)

* * *

1979, Feb. 02 — MDL-362 - Transferred to Western District of Missouri, pursuant to Multidistrict Litigation Panel order. Case No. H-77-288 from the Southern District of Texas. GHM

* * *

Entries from Docket in Case No. 78-0266-CV-W-2.

PLAINTIFFS	DEFENDANTS
HALE, Larry HALE, Linda	FIRESTONE TIRE & RUBBER COMPANY

* * *

1978, Aug. 29 — COMPLAINT - with JS-44C — filed. (Two summonses issued and delivered to the U.S. Marshal). Plt. $15.00 SBN

* * *

Entries from Docket in Case No. 78-0408-CV-W-1.

PLAINTIFFS	DEFENDANTS
GOODWIN, Bobby Craig, GOODWIN, Carolyn Marie, GOODWIN, Melissa Darlene and GOODWIN, Kathy Diane, Minors, by and through their Natural Mother and Next Friend, PERKINS, Edna Goodwin and PERKINS,	1. THE FIRESTONE TIRE & RUBBER COMPANY and 2. THE GOODYEAR TIRE & RUBBER COMPANY

EDNA GOODWIN, individually

* * *

1978, June 5 — COMPLAINT — with JS-44c — filed. (Two Summonses issued and delivered to the U.S. Marshal). $15.00 Plt. SBN

* * *

Entries from Docket in Case No. 78-0647-CV-W-2.

PLAINTIFFS	DEFENDANTS
BUTLER, JOSEPH WILLIE	1 FIRESTONE TIRE AND RUBBER COMPANY and 2 THE GOODYEAR TIRE AND RUBBER COMPANY

* * *

1978 Apr 20 — COMPLAINT - with JS-44c, filed. (One summons issued and delivered to U.S. Marshal.) Plt. $15.00 BB

* * *

Entries from Docket in M.D.L. No. 362.

PLAINTIFFS	DEFENDANTS
M.D.L. No. 362 In re: MULTI-PIECE RIM PRODUCTS LIABILITY LITIGATION	MDL No. 362

* * *

DATE	NR	PROCEEDINGS

1979 Jan 22 — 1. OPINION and Order from the MDL Panel transferring cases to the Western District of Missouri, filed. HCL.

STYLE	FORMER NUMBER	NUMBER ASSIGNED
McGee, et al v. Goodyear et al	CA78-P0090S	79-0078-CV-W-2
Clayton, et al v. Firestone et al	CA78-G0396S	79-0091-CV-W-2
Henderson, et al v. Firestone	C78-0002-BG	79-0165-CV-W-2
Barry v. Firestone	77-2796-G	79-0174-CV-W-2
Lantieri, et al v. Goodyear	Y78-1469	79-0083-CV-W-2
Olsen v. Goodyear	77-0197-HEC	79-0111-CV-W-2
Dupuis v. Firestone	C-76-321	79-0088-CV-W-1
Davis, et al., v. Firestone	C-78-2182	79-0064-CV-W-2
Brown etc, v. Goodyear	CA3-78-0556-D	79-0071-CV-W-2
Rodriguez, etc v. Firestone	H-77-288	79-0086-CV-W-2
(Consol.	77-1789	
Walker v. Chemical Leaman Tank Lines	76-0350CH	79-0081-CV-W-2
Mawby v. Firestone	870616	79-0122-CV-W-2
Johnson v. Firestone	871602	79-0161-CV-W-2
WITHIN THE WESTERN DISTRICT.		
Hale, et al v. Firestone	78-0266-CV-W-2	
Goodwin, et al v. Firestone	78-0408-CV-W-2	
Butler v. Firestone	78-0647-CV-W-2	
Walker et al v. Firestone	75CV363-W-2	

* * *

Apr. 23 — 40. — FIRST - Pretrial Order-filed, mailed. cm

* * *

Apr. 26 — 43. — DEPOSITION - Of John Risjord, taken April 16, 1979 - filed. (Firestone pd. $57.00) cm

* * *

May 24 — 72. — MOTION - of the Firestone Tire & Rubber Company to disqualify John C. Risjord with brief and suggestions and supporting affidavits, filed. HL

* * *

Jun. 18 — 92. — BRIEF - And suggestions in opposition to the motion of Firestone Tire & Rubber Company to disqualify John C. Risjord - filed. cm

* * *

July 03 — 113. — SUPPLEMENTAL - suggestions in support of Firestone's motion to disqualify, filed. HL

* * *

July 16 — 123. — DEPOSITION - Continued deposition of JOHN RISJORD, taken by the defendants, filed $_____ HL

* * *

Aug. 16 — 153. — SECOND - Pretrial Order, filed, mailed to liaison counsel. HL

* * *

Aug. 20 — 155. — TRANSCRIPT - of proceedings on August 10, 1979, filed. HL

* * *

Aug. 24 — 158. — TRANSFER - conditional transfer order from MDL Panle, filed. (Two attested copies mailed to the District of Kansas.) HL
Transferring Edward Compbell vs. The Goodyear Tire & Rubber Company C. A. No. 79-1314 and assigned No. 79-0770-CV-W-2 HL

* * *

Aug. 28 — 182. — PLAINTIFFS - report to the Court concerning purported conflict of John C. Risjord.

* * *

Sep. 11 — 197. — NOTICE - Of Appeal, filed. (Defendant Firestone from Second Pretrial Order No. 2.) yw

* * *

Oct. 5 — 242. — MOTION - and request for oral argument

of the Firestone Tire & Rubber Co., regarding contempt of John C. Risjord, with brief & suggestions in support.

* * *

Nov. 13 — 409. — BRIEF - Supplementary Brief and Response of John C. Risjord in Opposition to the Motion and Request for Oral Argument of the Firestone Tire & Rubber Co Regarding Contempt of John C. Risjord and the Motion of Firestone for Disqualification. rar

* * *

Nov. 30 — 456. — WITHDRAWAL - Firestone's Withdrawal of its Motion for Order Holding John C. Risjord in Contempt.) rar

* * *

Dec. 6 — 484. — AFFIDAVIT - of John B Carothers III. rar

* * *

Complaint.

In the United States District Court for the Southern District of Texas, Houston Division.

Luciano Rodriguez individually and as next friend of Rene Rodriguez, Plaintiffs, vs. Firestone Tire & Rubber Company and the Goodyear Tire & Rubber Company, Defendants. Civil Action No. H-77-288.

Filed Feb. 22, 1977.

COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES LUCIANO RODRIGUEZ, Individually and as Next Friend of RENE RODRIGUEZ, hereinafter called Plaintiffs, and make and file this their Complaint, complaining of FIRESTONE TIRE & RUBBER COMPANY and THE GOODYEAR TIRE & RUBBER COMPANY, hereinafter called Defendants, and for cause of action would respectfully show unto the Court and Jury the following:

I.

Plaintiffs are both residents of Bee County, Texas. Defendant, Firestone Tire & Rubber Company, is a foreign corporation licensed to do business in the State of Texas and whose registered agent for service is C T Corporation System, Republic National Bank Building, Dallas, Texas.

Defendant, The Goodyear Tire & Rubber Company, is a foreign corporation licensed to do business in the State of Texas and whose registered agent for service is C T Corporation System, Republic National Bank Building, Dallas, Texas.

Jurisdiction of this cause is based upon diversity of citizenship between the parties, the amount in controversy exceeds Ten Thousand and No/100's ($10,000.00) Dollars and is conferred upon this Court by 28 U.S.C. Sec. 1332.

II.

This suit is brought by the Plaintiffs for the purpose of recovering damages from the Defendants for serious personal injuries sustained by Rene Rodriguez as the result of a defective and dangerous truck tire rim and tire which were designed, produced, marketed, distributed and sold by the above mentioned Defendants and for failure to provide proper warnings for the users and consumers of said rim and tire.

III.

At all times germane to this lawsuit, Defendant, Firestone Tire & Rubber Company, was a corporation engaged in the design, manufacture, distribution and sale of truck rims, particularly the truck tire rim which is the subject of this lawsuit, further described as a tandem axle split rim. Some time prior to September 23, 1975, Defendant, Firestone Tire & Rubber Company, designed, manufactured, distributed and sold the above described split rim, and introduced said split rim into the stream of commerce, where it ultimately came into the hands of the Plaintiffs herein.

IV.

At all times germane to this lawsuit, Defendant, The Goodyear Tire & Rubber Company was a corporation engaged in the design, manufacture, distribution and sale of truck tires, particularly the truck tire involved in and made the basis of this lawsuit. The tire manufactured by The Goodyear Tire & Rubber Company was mounted upon the split rim manufactured by the Defendant, Firestone Tire & Rubber Company, at the time of the accident made the basis of this suit. Some time prior to September 23, 1975, Defendant, The Goodyear Tire & Rubber Company, designed, manufactured, distributed and sold the above de-

scribed tire, and introduced it into the stream of commerce wherein it ultimately came into the possession of the Plaintiffs herein.

V.

Thereafter, on or about September 23, 1975, while the Plaintiff, Rene Rodriguez, was in the process of airing up the tire mounted upon the rim involved in this suit, said rim blew apart and struck the Plaintiff in the head and body resulting in serious injuries to the Plaintiff which will be set out more fully herein.

VI.

Plaintiffs would show that the tire and rim were being used for the purpose and in the manner in which they were intended by the Defendants to be used, and were being used in a manner foreseeable to the Defendants at the time of the accident on or about September 23, 1975. Plaintiffs would also show that the split rim manufactured by the Defendant, Firestone Tire & Rubber Company and the tire manufactured by The Goodyear Tire & Rubber Company were dangerous and defective at the time they left the hands of the Defendants and at all times thereafter. Said split rim and tire were unfit for their intended use as a tire and rim on a tandem truck, which created an unreasonable risk of harm to the ultimate user, or users, of said split rim and tire. The split rim was dangerous and defective in that the rim was of a defective, improper and unsafe design, was capable of flying apart while in the process of filling up a tire with air, and would not adequately lock up and remain in one piece while a tire was being filled with air. As a result of this dangerous and defective condition and design which exposed the ultimate users to an unreasonable risk of harm, Plaintiffs were caused to suffer the injuries more particularly alleged herein, and said defective condition and design was a producing

cause of the injuries and damages suffered by the Plaintiffs herein. The tire manufactured by the Goodyear Tire & Rubber Company was dangerous and defective in that it was of a defective, improper and unsafe design and would not adequately serve its intended purpose for being mounted on a split rim and remaining in place after it was filled with air. As a result of this dangerous and defective condition which exposed the ultimate users to an unreasonable risk of harm, Plaintiffs were caused to suffer the injuries more particularly alleged herein, and said dangerous and defective condition and design was a producing cause of the injuries and damages suffered by the Plaintiffs herein.

VII.

Alternatively, the Plaintiffs would show that the Defendants failed in their duty to warn intended and potential users of the split rim and tire of their dangers and to provide them with adequate warnings concerning the lock up or latching design of the split rim, the amount of air to be inflated in the tire, when being used in conjunction with a split rim, of the dangers of mismatching the component parts of the split rim, of the proper size tires to be mounted on a split rim of the type involved in this lawsuit, and as to the dangers and potential consequences of the use of a tire and split rim of the type involved in this lawsuit. Plaintiffs would further show that said products were inherently dangerous products. As a result of this failure to warn, the Plaintiffs were caused to suffer the serious personal injuries hereinafter alleged, and said failure to warn was a producing cause of the injuries and damages suffered by the Plaintiffs.

VIII.

The Plaintiffs would alternatively show that the Defendants, and each of them, their agents, servants and employees, were negligent in many respects, both in the design

4. On or about September 23, 1975, while plaintiff, Rene Rodriguez, then age fourteen, was standing beside an inflated Goodyear truck tire mounted on a wheel designed and manufactured by Firestone, Kelsey Hayes and Budd, in Beeville, Texas, the wheel exploded violently striking plaintiff in the head and body causing severe permanent injuries.

5. The Firestone-Kelsey Hayes-Budd wheel was defective in that it had a tendency to explode and separate when put to the use which defendants could reasonably anticipate and for which the wheel was intended, namely for mounting truck tires and that at the time of the aforesaid explosion the wheel was in substantially the same condition as when manufactured, distributed and sold by defendants, so that defendants are strictly liable for injuries and damages to plaintiff resulting from the aforesaid defects and were negligent in the design, manufacture, distribution and sale of a defective product.

6. Plaintiff, Rene Rodriguez, sustained severe and permanent injuries to his head, body and limbs causing great pain, mental suffering, psychological and emotional derangement and requiring hospitalization, surgery and future medical care and treatment, and causing the loss of opportunity for employment, all to his damage in the sum of Two Million Dollars ($2,000,000.00).

7. At the time of the manufacture of the Firestone-Kelsey Hayes-Budd wheel, which was a multi-piece truck rim described as an RH5° and notoriously known as the ''suicide rim'' and ''the killer rim'', said rim was defective in that it had a proclivity to blow apart and explode when put to the use which defendants intended and anticipated and defendants with actual knowledge thereof failed to warn of said defect and failed to recall, retrofit or otherwise remedy design defects and known hazards of the rim.

8. At the time of the design, development, manufacture, distribution, licensing and sale of the subject multi-piece rim assembly and prior to decedent's injury, defendants knew that the design, configuration, materials and construction of the rim components presented an extreme and unusual hazard to the motoring public and particularly to anyone attempting to inflate the rim on a vehicle. In spite of the existence of known hazards and numerous serious and fatal injuries, of the RH5° rim and its predecessor, the RH rim, over a period of some fifty-five years, defendant negligently, willfully or intentionally,

(a) failed and refused to redesign such rims and failed to thereby preclude a mixture of parts;

(b) failed to recall such defective rims from the market;

(c) failed to develop, test and distribute safety devices to prevent explosive separation of such rims;

(d) failed to warn adequately of the hazards involved in every step of the assembly and usage of such rims;

(e) failed to develop any meaningful engineering criteria for determination of properly assembly and the extent of the hazard involved in improper assembly;

(f) failed to notify users of such rims of the risk involved in standing in close proximity of inflated assemblies;

(g) failed to replace said multi-piece assembly with safe rims of single-piece design or of safer multi-piece designs;

(h) failed to advise the United States Department of Transportation of the existence and extreme hazards presented by the defects inherent in such multi-piece rims;

(i) failed to notify and fully inform the United States Department of Transportation and state agencies

of the existence of the single-piece rim or of safer multi-piece rims as a solution to the problem;

(j) deliberately withheld information and give misinformation with respect to the nature, extent, cause and serious consequences of the defects in such rims and of the feasibility of recall or retrofit; before, during and after the attempted investigation by the Office of Defects Investigation, United States Department of Transportation, and state agencies, of multi-piece rims, and after being requested or required by the United States Department of Transportation and state agencies to develop and distribute foolproof or safe rims and to distribute adequate, clear and specific warnings with respect to such defects and hazards inherent in multi-piece rims failed to do so in a thorough, timely and specific manner;

(k) failed to discontinue production and failed to adequately test their multi-piece rims when defendants knew that better, safer products were available and knew that adequate and appropriate tests would establish defects which permit the bursting of the parts of said rims with resulting injuries or death;

(l) deliberately misrepresented to the Department of Transportation, state agencies, and to the general public the fact that the multi-piece rim was a defective and dangerous design concept remedial only by a total manufacturer's notification campaign, commonly known as recall or retrofit.

WHEREFORE, plaintiff Rene Rodriguez prays for judgment against defendants in the amount of Twenty-Two Million Dollars ($22,000,000.00) and for his costs herein expended.

COUNT II.

Comes now plaintiff, Rene Rodriguez, a minor by his Next Friend, Luciano Rodriguez, and for his claim against defendants states as follows:

1. The plaintiff is a minor, who brings this claim by his natural father and Next Friend, Luciano Rodriguez, who together with plaintiff, Delphina Rodriguez, are all citizens of the State of Texas; defendant, Firestone Tire & Rubber Company, is a Delaware corporation organized and existing under the laws of the State of Delaware with its principal office for the transaction of its ususal and customary business in Akron, Ohio, being a citizen of the States of Delaware and Ohio and not a citizen of the State of Texas; defendant Kelsey Hayes Company, is a corporation organized and existing under the laws of the State of Michigan and its principal office for the transaction of its usual and customary business in Romulus, Michigan, being a citizen of the State of Michigan and not a citizen of the State of Texas; defendant, The Goodyear Tire & Rubber Company, is a corporation organized and existing pursuant to the laws of the State of Ohio with its principal offices for the transaction of its usual business in Akron, Ohio, being a citizen of the State of Ohio and not a citizen of the State of Texas; defendant, The Budd Company, is a corporation organized and existing under the laws of the State of Pennsylvania, with its principal offices for the transaction of its usual and customary business in Detroit, Michigan, being a citizen of the States of Michigan and Pennsylvania and not a citizen of the State of Texas; so that there is complete diversity of citzenship between the parties plaintiff and parties defendant and the amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, to-wit: Twenty-Two Million Dollars ($22,000,000.00) and this Court has original jurisdiction pursuant to Title 28, U.S.C.A. Section 1332(a).

2. Defendants are and at all times hereinafter alleged were in the business of designing, manufacturing, licensing, distributing and selling, among other products, steel truck

wheels and doing business in Houston, Texas, within the judicial district through the sales and marketing activities of their employees so that defendants are foreign corporations residing in the Southern District of Texas for the purpose of jurisdiction and venue, by regularly transacting business through the presence of their employees.

3. Defendants Firestone and Goodyear are and at all times hereinafter alleged were in the business of designing, manufacturing, licensing, distributing and selling, among other products, truck tires, including wire tires and heavy ply radial tires, within the judicial district through sales and marketing activities of their employees so that defendants are foreign corporations residing in the Southern District of Texas for the purpose of jurisdiction and venue, by regularly transacting business through the presence of their employees.

4. On or about September 23, 1975, while plaintiff, Rene Rodriguez, then age fourteen, was standing beside an inflated Goodyear truck tire mounted on a wheel designed and manufactured by Firestone, Kelsey Hayes and Budd, in Beeville, Texas, the wheel exploded violently striking plaintiff in the head and body causing severe permanent injuries.

5. Plaintiff, Rene Rodriguez, sustained severe and permanent injuries to his head, body and limbs causing great pain, mental suffering, psychological and emotional derangement and requiring hospitalization, surgery and future medical care and treatment, and causing the loss of opportunity for employment, all to his damage in the sum of Two Million Dollars ($2,000,000.00).

6. Defendants and certain executive officers and employees conspiring with each other and with other manufacturers defrauded plaintiff, the United States of America,

the several States, state and federal courts, litigants, and the general public for the purposes of avoiding a manufacturer's notification campaign, commonly known as recall or retrofit and avoiding liability to litigants and claimants killed, blinded, maimed and otherwise injured by the RH5° rim, its predecessors and successors over a period exceeding 50 years, including specific acts and conduct similar thereto hereafter more fully set forth

7. POLITICAL SLUSH FUND. Defendants established and utilized a political slush fund into which it diverted corporate assets in excess of One Million Dollars ($1,000,000.00), which was used for illegal purposes including the avoidance of a government mandated recall campaign of certain multi-piece rims, including the RH5° rim. Approximately Three Hundred Thirty-Three Thousand Dollars ($333,000.00) in illegal domestic political payments were made between November 1970 and May 1973, the distribution of which was directed by corporate executives.

8. FALSE REPRESENTATIONS AS TO THE NUMBER AND SEVERITY OF RIM EXPLOSIONS. Defendants deliberately and fraudulently understated and minimized the number of known incidents, claims and lawsuits involving multi-piece rims including the RH and RH5° rims in testimony and official responses to inquiries by the United States Department of Transportation, the Industrial Commission of the State of Utah, and in various lawsuits in state and federal district courts.

9. ON-VEHICLE INFLATION HAZARD. Defendants deliberately and fraudulently withheld information from the U.S. Department of Transportation, the Industrial Commission of the State of Utah, federal district courts and state trial courts, that the RH and RH5° rims were the only medium or heavy duty truck rims which explode outboard when mounted on rear wheels or trucks and school buses thereby

causing a serious hazard to any person attempting to check air pressure or add air to a partially inflated tire, or to lower a vehicle from a jack to the ground, or vice versa, as well as constituting a deadly hazard to passengers and bystanders or other persons within range of the exploding ring.

10. STEERING AXLE HAZARD. Defendants deliberately and fraudulently withheld evidence that the RH and RH5° rims were the only type in the country which are designed so they explode inboard on the steering axles of school buses and trucks, severing brake lines and disabling steering mechanisms thereby causing head-on collisions, roll over and other fatal and crippling vehicular collisions, and defendants suppressed evidence that those exposed to hazards peculiar to the RH5° rim are not limited to tire busters but include children on school buses, as well as the entire motoring public.

11. XL AS THE FAIL-SAFE SOLUTION. Defendants deliberately and fraudulently misrepresented the XL two-piece rim as a "fail-safe" successor to the RH5° rim when defendants knew that the XL rim was unsafe in that it has the same capability of explosion with resultant death or injury whether on or off vehicles.

12. WARNING STICKERS. Defendants deliberately and fraudulently conspired with others to remain silent and avoid adequate warning to users of multi-piece truck rim components, including the RH5° type by failing to attach warning stickers to rims, by representing that it was impossible to devise a sticker which would be prominent and would adhere to new and existing rims, by abandoning defendants' warning sticker project for multi-piece rims and encouraging other rim manufacturers to abandon existing and proposed warning sticker programs, all for the purposes of avoiding expense and avoiding the admission of liability

for products liability rim explosion cases at the expense of human life and health including that of the plaintiff.

13. SAFETY CAGE AS THE SOLUTION. Defendants deliberately and fraudulently misrepresented that safety cages and other restraining devices would effectively eliminate death and injury from multi-piece rim explosions in general and RH5° rim explosions in particular although defendants knew that numerous explosions resulting in blinding, maiming, crippling and death were and are occurring during vehicular mounting and demounting, while vehicles are in service and during routine tire maintenance, inflation and deflation of rim assemblies mounted on vehicles, and defendants deliberately and fraudulently failed to advise and acknowledge that safety cages and restraining devices are useless at such times and would not avoid numerous rim explosion occurrences involving death and serious injury.

13. WARNING AND MATCHING LITERATURE AS THE SOLUTION. Defendants deliberately and fraudulently misrepresented that printed warning materials and rim component matching literature were an alternative solution to the multi-piece rim explosion hazard although they knew that such printed literature and materials rarely reached the ultimate users and tire busters, and that explosion injuries and death would continue regardless of such literature and materials because the literature would not be appropriately disseminated, was difficult or impossible for most users to comprehend, and even if disseminated and comprehended that compliance was impossible or impractical.

14. WEAR FROM SQUEAKING AND RUN FLAT. Defendants deliberately and fraudulently failed to disclose complaints from users, original equipment manufacturers and distributors that new and serviceable used RH5° rims manufactured during the 1950s and 1960s experienced a phenomenon of ''squeaking'' indicative of relative motion

and that RH5° rims whenever manufactured and under inflated or run flat experienced relative motion, both of which conditions cause rapid wear between components properly mounted resulting in loss of locking fit.

15. DISTRIBUTION OF WARNING LITERATURE AND THE CONSPIRACY OF SILENCE. Defendants deliberately and fraudulently withheld information, instructional and warning material and failed to fulfill its promise to the Department of Transportation and its obligation to the public to distribute warning literature and rim matching information.

16. MISMATCH HAZARD. Defendants deliberately and fraudulently misrepresented that the RH5° rim could not be mismatched with other sizes and types made by defendants and other manufacturers, that there were only two manufacturers of the RH5° rim component, that only defendants manufactured the RH5° ring component and that the manufacturers shared drawings, blueprints and specifications so that parts were identical and interchangeable, although defendants knew that such representations were false because there were other undisclosed manufacturers of such components which if mated with defendants' components created a hazardous mismatch condition while appearing to match, because defendants and other manufacturers made substantial design changes in RH5° rim components without notice to each other or to the public thereby enhancing the probability of explosion because of hazardous mismatch between components which predated and antedated changes and between components of different manufacturers.

17. TIRE INCOMPATIBILITY. Defendants deliberately and fraudulently failed to disclose that certain multipiece rims including that RH5° are incompatible with radial tires, steel bias-ply tires, or tires of high load range and

failed to disclose that the risk of explosion is substantially increased when such tires are mounted and inflated on certain multi-piece rims including RH5° rims and failed to disclose that said rims manufactured during the 1950s and 1960s are stamped with misinformation concerning tire sizes and load ranges subsequently in effect.

18. SINGLE-PIECE RIM AS THE SAFE SOLUTION. Defendants deliberately and fraudulently failed to disclose the development during the 1950s of a completely safe singlepiece drop center rim for usage on all trucks which if promoted would entirely eliminate the rim explosion hazard and conspired with others to keep silent with respect to the development of the state of the art in order to maintain their position in the truck tire market, which activity was motivated solely by profit and at the expense of life and health of the public, including the plaintiffs.

19. The plaintiffs, the United States Department of Transportation, authorities in the several States and the general public reasonably relied on defendants to make full and honest disclosures with respect to the design, production, distribution, warning and instruction of truck rims and as a result of the foregoing fraudulent misrepresentations plaintiff sustained severe permanent and progressive personal injury, pain, anguish and suffering, medical expense and loss of earnings all to his actual damage in the sum of One Million Dollars ($1,000,000.00).

20. As a result of the foregoing fraudulent misrepresentations of defendants, plaintiff is entitled to exemplary damages in the sum of Twenty Million Dollars ($20,-000,000.00).

21. Most of the acts, omissions and misrepresentations of the defendants occurred or were planned at defendants' places of business in Ohio. Plaintiffs request that the Court

Complaint.

In the United States District Court for the Western District of Missouri, Western Division.

Larry Hale and Linda Hale, Plaintiffs, v. Firestone Tire & Rubber Company, A Corporation, Defendant. Case No. 78-0266-CV-W.

Filed Aug. 29 1978.

COMPLAINT

COUNT I.

Comes now plaintiff, Larry Hale, and for his claim against defendant, states as follows:

1. Plaintiffs are individual citizens of Sheldon, Missouri; defendant is a corporation organized and existing under the laws of the State of Ohio, with its principal office for the transaction of its usual and customary business in Akron, Ohio, so that defendant is a citizen of the State of Ohio and not a citizen of the State of Missouri, and there is complete diversity of citizenship between the parties, plaintiff and defendant.

2. The amount in controversy exceeds the sum of Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, to-wit: Five Million Five Hundred Thousand Dollars ($5,500,000.00), and this Court has jurisdiction in the first instance pursuant to Title 28, U.S.C. Sec. 1332(a).

3. Defendant is and at all times hereafter alleged was in the business of designing, manufacturing, licensing, distributing and selling, among other products, steel truck rims and in particular a certain notorious rim assembly, designated by defendant as the RH5° rim; defendant is subject to the jurisdiction of this Court because it has a district office for the transaction of business at 2001 Grand Avenue,

Kansas City, Missouri, within the Western District of Missouri.

4. On or about October 4, 1977, while the plaintiff, Larry J. Hale, was standing beside an inflated truck tire mounted on an RH5° Firestone rim mounted on a 1968 Ford F750 flat bed truck located near Sarcoxie, Missouri, the ring of the RH5° rim assembly separated from the rim and disc wheel to which it was intended to be affixed causing a violent explosion and striking the plaintiff in the head and body resulting in the serious permanent and progressive injuries to plaintiff as more fully hereinafter set forth.

5. The Firestone RH5° rim assembly was defective at the time of manufacture in that it had a tendency to burst apart and fail when put to the use which defendant could reasonably anticipate and for which the assembly was intended.

6. On October 4, 1977, the Firestone RH5° rim assembly was in substantially the same condition as when manufactured by defendant and on said date was being used as reasonably anticipated and intended by defendant, that is to support an inflated truck tire on the outer dual of the rear axle.

7. As the direct and proximate result of the aforesaid explosion of the Firestone RH5° rim assembly, plaintiff Larry J. Hale, was struck with great force and violence about the face, head, body, arms, hands, and legs, resulting in head injuries, diplopia, diminished vision, broken and lost teeth, severe facial lacerations, a broken hand, multiple contusions, abrasions and lacerations, and multiple injuries to all the nerves, tissues, bones and joints of his body, causing excruciating physical pain and mental anguish, all of which injuries are permanent and progressive. As a result of the aforesaid injuries, plaintiff has been disabled from

performing gainful employment and will continue to suffer from said disabilities, and has lost and will continue to lose income. Plaintiff's injuries have and will in the future hamper and restrict plaintiff's physical activities and participation in physical or mental endeavors. Plaintiff has been compelled to undergo medical and surgical procedures, been confined to hospitals for extended periods of time, and will in the future require additional medical attention at great expense, inconvenience and resulting in considerable pain and anguish for the remainder of his life. Because of the foregoing injuries, plaintiff has been damaged in the sum of Five Hundred Thousand Dollars ($500,000.00).

8. At the time of the design, development, manufacture, distribution, licensing and sale of the subject RH5° rim assembly and prior to plaintiff's injury, defendant knew that the design, configuration, materials and construction of the multi-piece Firestone rims presented an extreme and unusual hazard to the motoring public and particularly to anyone attempting to add air pressure to an inflated assembly utilizing the notorious RH5° rim. In spite of the existence of known hazards and numerous serious and fatal injuries, over a period of some fifty-five years defendant Firestone Tire & Rubber Company, negligently, willfully or intentional

(a) failed and refused to redesign multi-piece rims in general and the RH and RH5° rims in particular;

(b) failed to recall such defective rims from the market;

(c) failed to develop, test and distribute safety devices to prevent explosive separation of multi-piece rims;

(d) failed to warn adequately of the hazards involved in every step of the assembly and usage of such rims;

(e) failed to develop any meaningful engineering criteria for determination of proper assembly and the extent of the hazard involved in improper assembly;

(f) failed to notify users of such rims of the risk involved in standing in close proximity to inflated assemblies;

(g) failed to replace the multi-piece assembly with safe rims of single-piece design or of safer multi-piece designs;

(h) failed to advise the United States Department of Transportation of the existence and extreme hazard presented by the defects inherent in the notorious RH5° rim and its predecessor;

(i) failed to notify and fully inform the United States Department of Transportation and state agencies of the existence of the single-piece rim or of safer multi-piece rims as a solution to the problem;

(j) deliberately withheld information and gave misinformation with respect to the nature, extent, cause and serious consequences of the defects in such rims and of the feasibility of recall or retrofit, before, during and after the attempted investigation by the Office of Defects Investigation, United States Department of Transportation, and state agencies, in re the RH5° Firestone multi-piece rim and after being requested or required by the United States Department of Transportation and state agencies to develop and distribute foolproof or safe rims and to distribute adequate, clear and specific warnings with respect to such defects and hazards inherent in the notorious RH5° rim failed to do so in a thorough, timely and specific manner;

(k) failed to discontinue production and failed to adequately test its RH5° rims and related rims when defendant knew that better, safer products were available and knew that adequate and appropriate tests would establish defects which permit the bursting of

the parts of the said rims with resulting injuries or death;

(l) deliberately misrepresented to the Department of Transportation, state agencies, and to the general public the fact that the RH5° rim was a defective and dangerous design concept remedial only by a total manufacturer's notification campaign, commonly known as recall or retrofit.

Plaintiff states that the conduct and failures of defendant, Firestone Tire & Rubber Company, and its individual officers and employees acting as the agents of Firestone, were in willful, wanton, reckless and grossly negligent disregard for the safety of the public and particularly the plaintiff in that defendant's conduct was motivated solely by profit and convenience without regard to safety or preservation of human life and was oppressive, and as a result of the aforesaid plaintiff is entitled to exemplary damages in the sum of Five Million Dollars ($5,000,000.00).

9. Most of the acts, omissions and misrepresentations of the defendant occurred or were planned at defendant's principal place of business in Akron, Ohio. Plaintiffs request that the Court take judicial notice of the law of the State of Ohio which provides for the recovery of exemplary damages against a corporation for the tortious acts of its agents within the scope of their employment for their failure to redesign or recall a product or to warn the public when they knew the design of the product posed a grave danger to the lives or property of consumers.

WHEREFORE, plaintiff prays judgment against defendant in Count I in the sum of Five Hundred Thousand Dollars ($500,000.00) actual damages and Five Million Dollars ($5,000,000.00) punitive damages and his costs herein expended.

COUNT II.

Comes now Larry Hale and for his claim against defendant in Count II states as follows:

1. Plaintiff incorporates by specific reference as if fully hereinafter set forth each allegation of paragraphs 1, 2, 3 and 4 of Count I hereof.

2. Defendant Firestone Tire & Rubber Company, hereinafter referred to as Firestone, and certain executive officers and employees conspiring with each other and with other manufacturers defrauded plaintiff, the United States of America, the several States, state and federal courts, litigants, and the general public for the purposes of avoiding a manufacturer's notification campaign, commonly known as recall or retrofit and avoiding liability to litigants and claimants killed, blinded, maimed and otherwise injured by the RH5° rim, its predecessors and successors over a period exceeding 50 years, including specific acts and conduct similar thereto hereafter more fully set forth.

3. POLITICAL SLUSH FUND. Firestone established and utilized a political slush fund into which it diverted corporate assets in excess of One Million Dollars ($1,000,000.00), which was used for illegal purposes including the avoidance of a government mandated recall campaign of the RH5° rim. Approximately Three Hundred Thirty-Three Thousand Dollars ($333,000.00) in illegal domestic political payments were made between November, 1970 and May, 1973, the distribution of which was directed by Firestone executives.

4. FALSE REPRESENTATIONS AS TO THE NUMBER AND SEVERITY OF RIM EXPLOSIONS. Firestone deliberately and fraudulently understated and minimized the number of known incidents, claims and lawsuits involving RH and RH5° rims in testimony and official responses to

inquiries by the United States Department of Transportation, the Industrial Commission of the State of Utah, and in various lawsuits in state and federal district courts.

5. ON VEHICLE INFLATION HAZARD. Firestone deliberately and fraudulently withheld information from the U.S. Department of Transportation, the Industrial Commission of the State of Utah, federal district courts and state trial courts, that the RH and RH5° rims were the only medium or heavy truck rims which explode outboard when mounted on rear wheels of trucks and school buses thereby causing a serious hazard to any person attempting to check air pressure or add air to a partially inflated tire, or to lower a vehicle from a jack to the ground, or vice versa, as well as constituting a deadly hazard to passengers and bystanders or other persons within range of the exploding ring.

6. STEERING AXLE HAZARD. Firestone deliberately and fraudulently withheld evidence that the RH and the RH5° rims were the only type in the country which are designed so they explode inboard on the steering axles of school buses and trucks, severing brake lines and disabling steering mechanisms thereby causing head-on collisions, roll over, and other fatal and crippling vehicular collisions, and Firestone suppressed evidence that those exposed to hazards peculiar to the RH5° rim are not limited to tire busters but include children on school buses, as well as the entire motoring public.

7. XL AS THE FAIL-SAFE SOLUTION. Firestone deliberately and fraudulently misrepresented its XL two-piece rim as a ''fail-safe'' successor to the RH5° rim when Firestone knew that the XL rim was unsafe in that it has the same capability of explosion with resultant death or injury whether on or off vehicles.

8. WARNING STICKERS. Firestone deliberately and fraudulently conspired with others to remain silent and avoid

adequate warning to users of multi-piece truck rim components, including the RH5° type by failing to attach warning stickers to rims, by representing that it was impossible to devise a sticker which would be prominent and would adhere to new and existing rims, by abandoning Firestone's warning sticker project for multi-piece rims and encouraging other rim manufacturers to abandon existing and proposed warning sticker programs, all for the purposes of avoiding approximately $600,000.00 in expense and avoiding the admission of liability for products liability rim explosion cases at the expense of human life and health including that of the plaintiff.

9. SAFETY CAGE AS THE SOLUTION. Firestone deliberately and fraudulently misrepresented that safety cages and other restraining devices would effectively eliminate death and injury from multi-piece rim explosions in general and RH5° rim explosions in particular although Firestone knew that numerous explosions resulting in blinding, maiming, crippling and death were and are occurring during vehicular mounting and demounting, while vehicles are in service and during routine tire maintenance, inflation and deflation of rim assemblies mounted on vehicles, and Firestone deliberately and fraudulently failed to advise and acknowledge that safety cages and restraining devices are useless at such times and would not avoid numerous rim explosion occurrences involving death and serious injury.

10. WARNING AND MATCHING LITERATURE AS THE SOLUTION. Firestone deliberately and fraudulently misrepresented that printed warning materials and rim component matching literature were an alternative solution to the multi-piece rim explosion hazard although Firestone knew that such printed literature and materials rarely reached the ultimate users and tire busters, and that explosion injuries and death would continue regardless of such literature and

materials because the literature would not be appropriately disseminated, was difficult or impossible for most users to comprehend, and even if disseminated and comprehended that compliance was impossible or impractical.

11. WEAR FROM SQUEAKING AND RUN FLAT. Firestone deliberately and fraudulently failed to disclose complaints from users, original equipment manufacturers and distributors that new and serviceable used RH5° rims manufactured during the 1950s and 1960s experienced a phenomenon of ''squeaking'' indicative of relative motion and that RH5° rims whenever manufactured and under inflated or run flat experienced relative motion, both of which conditions cause rapid wear between components properly mounted resulting in loss of locking fit.

12. DISTRIBUTION OF WARNING LITERATURE AND THE CONSPIRACY OF SILENCE. Firestone deliberately and fraudulently withheld information, instructional and warning material and failed to fulfill its promise to the Department of Transportation and its obligation to the public to distribute warning literature and rim matching information.

13. MISMATCH HAZARD. Firestone deliberately and fraudulently misrepresented that the RH5° rim could not be mismatched with other sizes and types made by Firestone and other manufacturers, that there were only two manufacturers of the RH5° rim component, that only Firestone manufactured the RH5° ring component and that the manufacturers shared drawings, blueprints and specifications so that parts were identical and interchangeable, although Firestone knew that such representations were false because there were other undisclosed manufacturers of such components which if mated with Firestone components created a hazardous mismatch condition while appearing to match, because Firestone and other manufacturers made substantial

design changes in RH5° rim components without notice to each other or to the public thereby enhancing the probability of explosion because of hazardous mismatch between components which predated and antedated changes and between components of different manufacturers.

14. TIRE INCOMPATIBILITY. Firestone deliberately and fraudulently failed to disclose that RH5° rims are incompatible with radial tires, steel bias-ply tires, or tires of high load range and failed to disclose that the risk of explosion is substantially increased when such tires are mounted and inflated on RH5° rims and failed to disclose that RH5° rims manufactured during the 1950s and 1960s are stamped with misinformation concerning tire sizes and load ranges subsequently in effect.

15. SINGLE-PIECE RIM AS THE SAFE SOLUTION. Firestone deliberately and fraudulently failed to disclose that it had developed during the 1950s a completely safe single-piece drop center rim for usage on all trucks which if promoted would entirely eliminate the rim explosion hazard and conspired with others to keep silent with respect to the development of the state of the art in order to maintain its position in the truck tire market, which activity was motivated solely by profit and at the expense of life and health of the public, including the plaintiff.

16. The plaintiff, the United States Department of Transportation, authorities in the several States and the general public reasonably relied on Firestone to make full and honest disclosure with respect to the design, production, distribution, warning and instruction of its truck rims and as a result of the foregoing fraudulent misrepresentations plaintiff sustained severe permanent and progressive personal injury, pain, anguish and suffering, medical expense and loss of earnings all to his actual damage in the sum of Five Hundred Thousand Dollars ($500,000.00).

defendant knew that better, safer products were available and knew that adequate and appropriate tests would establish defects which permit the bursting of the parts of the said rims with resulting injuries or death;

(l) deliberately misrepresented to the Department of Transportation, state agencies, and to the general public the fact that the RH5° rim was a defective and dangerous design concept remedial only by a total manufacturer's notification campaign, commonly known as recall or retrofit.

Plaintiff states that the conduct and failures of defendant, Firestone Tire & Rubber Company, and its individual officers and employees acting as the agents of Firestone, were in willful, wanton, reckless and grossly negligent disregard for the safety of the public and particularly the plaintiff in that defendant's conduct was motivated solely by profit and convenience without regard to safety or preservation of human life and was oppressive, and as a result of the aforesaid plaintiff is entitled to exemplary damages in the sum of One Million Dollars ($1,000,000.00).

9. Most of the acts, omissions and misrepresentations of the defendant occurred or were planned at defendant's principal place of business in Akron, Ohio. Plaintiffs request that the Court take judicial notice of the law of the State of Ohio which provides for the recovery of exemplary damages against a corporation for the tortious acts of its agents within the scope of their employment for their failure to redesign or recall a product or to warn the public when they knew the design of the product posed a grave danger to the lives or property of consumers.

WHEREFORE, plaintiff prays judgment against defendant in Count III in the sum of One Hundred Thousand

Dollars ($100,000.00) actual damages and One Million Dollars ($1,000,000.00) punitive damages and for her costs herein expended.

COUNT IV.

Comes now Linda Hale and for her claim against defendant states as follows:

1. Plaintiff incorporates by specific reference as if fully hereinafter set forth each allegation of paragraphs 1, 2, 3 and 4 of Count III hereof.

2. Defendant Firestone Tire & Rubber Company, hereinafter referred to as Firestone, and certain executive officers and employees conspiring with each other and with other manufacturers defrauded plaintiff, the United States of America, the several States, state and federal courts, litigants, and the general public for the purposes of avoiding a manufacturers' notification campaign, commonly known as recall or retrofit, and avoiding liability to litigants and claimants killed, blinded, maimed and otherwise injured by the RH5° rim, its predecessors and successors over a period exceeding fifty years, including specific acts and conduct similar thereto hereafter more fully set forth.

3. POLITICAL SLUSH FUND. Firestone established and utilized a political slush fund into which it diverted corporate assets in excess of One Million Dollars ($1,000,000.00), which was used for illegal purposes including the avoidance of a government mandated recall campaign of the RH5° rim. Apparently Three Hundred Thirty-Three Thousand Dollars ($333,000,00) in illegal domestic political payments were made between November, 1970 and May, 1973, the distribution of which was directed by Firestone executives.

4. FALSE REPRESENTATIONS AS TO THE NUMBER AND SEVERITY OF RIM EXPLOSIONS. Firestone

deliberately and fraudulently understated and minimized the number of known incidents, claims and lawsuits involving RH and RH5° rims in testimony and official responses to inquiries by the United States Department of Transportation, the Industrial Commission of the State of Utah, and in various lawsuits in state and federal district courts.

5. ON VEHICLE INFLATION HAZARD. Firestone deliberately and fraudulently withheld information from the U.S. Department of Transportation, the Industrial Commission of the State of Utah, federal district courts and state trial courts, that the RH and RH5° rims were the only medium or heavy truck rims which explode outboard when mounted on rear wheels of trucks and school buses thereby causing a serious hazard to any person attempting to check air pressure or add air to a partially inflated tire, or to lower a vehicle from a jack to the ground, or vice versa, as well as constituting a deadly hazard to passengers and bystanders or other persons within range of the exploding ring.

6. STEERING AXLE HAZARD. Firestone deliberately and fraudulently withheld evidence that the RH and the RH5° rims were the only type in the country which are designed so they explode inboard on the steering axles of school buses and trucks, severing brake lines and disabling steering mechanisms thereby causing head-on collisions, roll over, and other fatal and crippling vehicular collisions thereby suppressing evidence that the exposure to hazards peculiar to the RH5° rim is not limited to tire busters but includes children on school buses, as well as the entire motoring public.

7. XL AS THE FAIL-SAFE SOLUTION. Firestone deliberately and fraudulently misrepresented its XL two-piece rim as a "fail-safe" successor to the RH5° rim when Firestone knew that the XL rim was unsafe in that it has

the same capability of explosion with resultant death or injury whether on or off vehicles.

8. WARNING STICKERS. Firestone deliberately and fraudulently conspired with others to remain silent and avoid adequate warning to users of multi-piece truck rim components, including the RH5° type by failing to attach warning stickers to rims, by representing that it was impossible to devise a sticker which would be prominent and would adhere to new and existing rims, by abandoning Firestone's warning sticker project for multi-piece rims and encouraging other rim manufacturers to abandon existing and proposed warning sticker programs, all for the purposes of avoiding approximately $600,000.00 in expense and avoiding the admission of liability rim explosion cases at the expense of human life and health including that of the plaintiff's husband, Larry J. Hale.

9. SAFETY CAGE AS THE SOLUTION. Firestone deliberately and fraudulently misrepresented that safety cages and other restraining devices would effectively eliminate death and injury from multi-piece rim explosions in general and RH5° rim explosions in particular although Firestone knew that numerous explosions resulting in blinding, maiming, crippling and death were and are occurring during vehicular mounting and demounting, while vehicles are in service and during routine tire maintenance, inflation and deflation of rim assemblies mounted on vehicles, and Firestone deliberately and fraudulently failed to advise and acknowledge that safety cages and restraining devices are useless at such times and would not avoid numerous rim explosion occurrences involving death and serious injury.

10. WARNING AND MATCHING LITERATURE AS THE SOLUTION. Firestone deliberately and fraudulently misrepresented that printed warning materials and rim component matching literature were an alternative solution to

the multi-piece rim explosion hazard although Firestone knew that such printed literature and materials rarely reached the ultimate users and tire busters, and that explosion injuries and death would continue regardless of such literature and materials because the literature would not be appropriately disseminated, was difficult or impossible for most users to comprehend, and even if disseminated and comprehended that compliance was impossible or impractical.

11. WEAR FROM SQUEAKING AND RUN FLAT. Firestone deliberately and fraudulently failed to disclose complaints from users, original equipment manufacturers and distributors that new and serviceable used RH5° rims manufactured during the 1950s and 1960s experienced a phenomenon of ''squeaking'' indicative of relative motion and that RH5° rims whenever manufactured and under inflated or run flat experienced relative motion, both of which conditions cause rapid wear between components properly mounted resulting in loss of locking fit.

12. DISTRIBUTION OF WARNING LITERATURE AND THE CONSPIRACY OF SILENCE. Firestone deliberately and fraudulently withheld information, instructional and warning material and failed to fulfill its promise to the Department of Transportation and its obligation to the public to distribute warning literature and rim matching information.

13. MISMATCH HAZARD. Firestone deliberately and fraudulently misrepresented that the RH5° rim could not be mismatched with other sizes and types made by Firestone and other manufacturers, that there were only two manufacturers of the RH5° rim component, that only Firestone manufactured the RH5° ring component and that the manufacturers shared drawings, blueprints and specifications so that parts were identical and interchangeable, although Firestone knew that such representations were false because

there were other undisclosed manufacturers of such components which if mated with Firestone components created a hazardous mismatch condition while appearing to match, because Firestone and other manufacturers made substantial design changes in RH5° rim components without notice to each other or to the public thereby enhancing the probability of explosion because of hazardous mismatch between components which predated and antedated changes and between components of different manufacturers.

14. TIRE INCOMPATIBILITY. Firestone deliberately and fraudulently failed to disclose that RH5° rims are incompatible with radial tires, steel bias-ply tires, or tires of high load range and failed to disclose that the risk of explosion is substantially increased when such tires are mounted and inflated on RH5° rims and failed to disclose that RH5° rims manufactured during the 1950s and 1960s are stamped with misinformation concerning tire sizes and load ranges subsequently in effect.

15. SINGLE-PIECE RIM AS THE SAFE SOLUTION. Firestone deliberately and fraudulently failed to disclose that it had developed during the 1950s a completely safe single-piece drop center rim for usage on all trucks which if promoted would entirely eliminate the rim explosion hazard and conspired with others to keep silent with respect to the development of the state of the art in order to maintain its position in the truck tire market, which activity was motivated solely by profit and at the expense of life and health of the public, including the plaintiff's husband, Larry J. Hale.

16. The plaintiff, the United States Department of Transportation, authorities in the several States and the general public reasonably relied on Firestone to make full and honest disclosure with respect to the design, production, distribution, warning and instruction of its truck rims, and

as a result of the foregoing fraudulent misrepresentations plaintiff's husband, Larry J. Hale, sustained severe permanent and progressive personal injury, pain, anguish and suffering, medical expense and loss of earnings. As a result of the aforesaid injuries, plaintiff, Linda Hale, as the spouse of Larry J. Hale, has sustained the loss of services and companionship and support of her husband and their marital relationship has been interrupted and disturbed, all to her damage in the sum of One Hundred Thousand Dollars ($100,000.00).

17. As a result of the foregoing fraudulent misrepresentations of Firestone, plaintiff is entitled to exemplary damages in the sum of One Million Dollars ($1,000,000.00).

18. Most of the acts, omissions and misrepresentations of the defendant occurred or were planned at defendant's principal place of business in Akron, Ohio. Plaintiffs request that the Court take judicial notice of the law of the State of Ohio which provides for the recovery of exemplary damages against a corporation for the tortious acts of its agents within the scope of their employment for their failure to redesign or recall a product or to warn the public when they knew the design of the product posed a grave danger to the lives or property of consumers.

WHEREFORE, plaintiff prays judgment against defendant in Count IV in the sum of One Hundred Thousand Dollars ($100,000.00) actual damages and One Million Dollars ($1,000,000.00) punitive damages and her costs herein expended.

NIEWALD, RISJORD & WALDECK,
By /s/ JOHN C. RISJORD,
JOHN C. RISJORD
Attorneys for Plaintiffs.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial
by jury.

Complaint.

In the United States District Court for the Western District of Missouri, Western Division.

Bobby Craig Goodwin, Carolyn Marie Goodwin, Melissa Darlene Goodwin and Kathy Diane Goodwin, Minors, by and through their Natural Mother and Next Friend, Edna Goodwin Perkins, and Edna Goodwin Perkins, Individually, Plaintiffs, vs. Firestone Tire And Rubber Company, and The Goodyear Tire & Rubber Company, Defendants. Case No. 78-0408-CV-W-1.

Filed: June 5, 1978.

COMPLAINT
COUNT I

COME NOW plaintiffs and for Count I of their Complaint, state as follows:

1. Plaintiffs are individual citizens of the State of Mississippi, residing in Calhoun County; defendants are corporations organized and existing pursuant to the laws of the State of Ohio with their principal offices for the transaction of their usual business in Akron, Summit County, Ohio, so that defendants are citizens of the State of Ohio and not citizens of Mississippi so there is complete diversity of citizenship between the parties.

2. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, to wit: Eleven Million Dollars ($11,000,000.00), and this Court has jurisdiction in the first instance pursuant to Section 1332(a), U.S.C.

3. At all times hereinafter alleged, defendants were duly authorized to transact business in the State of Missouri and have offices and distribution centers for their products in

Kansas City, Jackson County, Missouri, within the Western Division of the Western District of Missouri.

4. Plaintiff Edna Goodwin Perkins is the surviving spouse of Willie Earl Goodwin, deceased; Bobby Craig Goodwin, Carolyn Marie Goodwin, Melissa Darlene Goodwin and Kathy Diane Goodwin are unmarried minors and the natural children of Willie Earl Goodwin, deceased. Plaintiffs were all dependent upon Willie Earl Goodwin, deceased, for support and maintenance at the time of his death, on or about June 13, 1975.

5. On or about May 22, 1973, a multi-piece truck rim manufactured by defendants, and assembled and inflated by a person other than the decedent exploded at Bruce, Calhoun County, Mississippi, while plaintiffs' decedent was mounting it on a vehicle causing massive injuries to plaintiffs' decedent, Willie Earl Goodwin, age 31, which caused his death at Memphis, Tennessee on June 13, 1975.

6. At the time of the manufacture of the multi-piece truck rim by defendants, said rim was defective in that it had a proclivity to blow apart and explode when put to the use which defendants intended and anticipated, and defendants failed to warn of said defect and failed to recall, retrofit or otherwise remedy design defects and known hazards of its multi-piece rims.

7. At the time of the explosion which killed plaintiffs' decedent, the truck rim assembly was in substantially the same condition as when manufactured by defendants, and was being used by plaintiffs' decedent as the product was reasonably intended to be used and as defendants anticipated its use and because of the aforesaid defect in said assembly, it broke apart and exploded, fatally injuring plaintiffs' decedent, Willie Earl Goodwin.

ing it on a vehicle causing massive injuries to plaintiffs' decedent, Willie Earl Goodwin, age 31, which caused his death at Memphis, Tennessee on June 13, 1975.

6. Plaintiffs' deceased received fatal injuries to his chest, abdomen, legs, arms and shoulders, and other parts of his body which caused great pain, mental suffering, psychological and emotional derangement and suffering.

7. Defendants Firestone Tire & Rubber Company and The Goodyear Tire & Rubber Company, hereinafter referred to as Firestone and Goodyear, and certain executive officers and employees conspiring with each other and with other manufacturers defrauded plaintiffs, the United States of America, the several States, state and federal courts, litigants, and the general public for the purposes of avoiding a manufacturers' notification campaign, commonly known as recall or retrofit, and avoiding liability to litigants and claimants killed, blinded, maimed and otherwise injured by multi-piece rims, over a period exceeding fifty years, including specific acts and conduct similar thereto hereafter more fully set forth.

8. POLITICAL SLUSH FUND. Firestone and Goodyear established and utilized political slush funds into which they diverted corporate assets in excess of One Million Dollars ($1,000,000.00), which were used for illegal purposes including the avoidance of a government investigation, discontinuance of production and a recall campaign of certain multi-piece rims. During the government investigation from 1969 through 1973, Firestone and Goodyear made illegal, domestic political payments, the distribution of which was directed by company executives, which payments were utilized to influence the aforesaid government investigation and proposed action.

9. FALSE REPRESENTATIONS AS TO THE NUMBER AND SEVERITY OF RIM EXPLOSIONS. Firestone and Goodyear deliberately and fraudulently understated and minimized the number of known incidents, claims and lawsuits involving multi-piece rims in testimony and official responses to inquiries by the United States Department of Transportation, investigatory departments of various states and in various lawsuits in state and federal district courts.

10. VEHICLE MOUNTING AND DEMOUNTING HAZARD. Firestone and Goodyear deliberately and fraudulently withheld information from the United States Department of Transportation, the investigatory departments of various states and the federal district courts and state trial courts that multi-piece truck rims of the type which killed plaintiffs' decedent have a proclivity for explosion during mounting and demounting on vehicles thereby causing potentially lethal explosions and injury or death to any person attempting to mount or demount an inflated multi-piece rim assembly onto or from a vehicle.

11. WARNING STICKERS. Firestone and Goodyear deliberately and fraudulently conspired between themselves and with others at secret and clandestine meetings at the Mayflower Hotel in Washington, D.C. and elsewhere to remain silent and avoid adequate warning to users of multi-piece truck rim components by failing to attach warning stickers to rims, by representing that it was impossible to devise a sticker which would be prominent and would adhere to new and existing rims, by abandoning their warning sticker projects for multi-piece rims and encouraging, agreeing and conspiring with each other and other rim manufacturers to abandon existing and proposed warning sticker programs, all for the purposes of avoiding approximately $1,000,000.00 in expense and avoiding the admission of liability for products liability rim explosion cases at the

expense of human life and health including that of the plaintiffs' decedent.

12. SAFETY CAGE AS THE SOLUTION. Firestone and Goodyear deliberately and fraudulently misrepresented that safety cages and other restraining devices would effectively eliminate death and injury from multi-piece rim explosions although they knew that numerous explosions resulting in blinding, maiming, crippling and death were and are occurring during vehicular mounting and demounting, while vehicles are in service and during routine tire maintenance, inflation and deflation of rim assemblies mounted on vehicles, and Firestone and Goodyear deliberately and fraudulently failed to advise and acknowledge that safety cages and restraining devices are useless at such times and would not avoid numerous rim explosion occurrences involving death and serious injury.

13. WARNING AND MATCHING LITERATURE AS THE SOLUTION. Firestone and Goodyear deliberately and fraudulently misrepresented that printed warning materials and rim component matching literature were an alternative solution to the multi-piece rim explosion hazard although Firestone and Goodyear knew that such printed literature and materials rarely reached the ultimate users and tire busters, and that explosion injuries and death would continue regardless of such literature and materials because defendants never intended to distribute the literature promulgated by the federal government, failed to distribute such literature, knew that the literature was difficult or impossible for most users to comprehend, and even if disseminated and comprehended that compliance was impossible, impractical and ineffective in preventing death and injury.

14. RUN FLAT HAZARD. Firestone and Goodyear deliberately and fraudulently failed to disclose the results of tests and complaints indicating that a majority of multi-

piece rim assemblies, including the type which killed plaintiffs' decedent, become missiles whenever the tire assembled thereon becomes deflated on the highway causing an unreasonable risk to the public, which if fully known to the National Highway Traffic Safety Administration, would have resulted in the promulgation of federal motor vehicle safety standards, recall and retrofit which would have eliminated the subject rim prior to the time it killed plaintiffs' decedent.

15. DISTRIBUTION OF WARNING LITERATURE AND CONSPIRACY OF SILENCE. Firestone and Goodyear deliberately and fraudulently withheld information, instructional and warning material and failed to fulfill their promises to the Department of Transportation and their obligations to the public to distribute warning literature and rim matching information.

16. MISMATCH HAZARD. Firestone and Goodyear deliberately and fraudulently misrepresented to the National Highway Traffic Safety Administration, the investigative departments of various states, and the state and federal courts that numerous components of one type or designation can be safely matched with rim components of other types and designation distributed by different manufacturers, that the configuration and specifications of the same or similar rim component parts of the same and of different manufacturers are compatible and safe, and that all extant rims are clearly, unequivocally and completely identified as to manufacturer, type and size so that the users thereof can safely match them when defendants knew that such representations were false.

17. SINGLE-PIECE RIM AS THE SAFE SOLUTION. Firestone and Goodyear deliberately and fraudulently failed to disclose that they had developed during the 1950s a completely safe single-piece drop center rim for usage on all

trucks which if promoted would entirely eliminate the rim explosion hazard and conspired among themselves and with others to keep silent with respect to the development of the state of the art in order to maintain their positions in the truck tire market, which actively was motivated solely by profit and at the expense of life and health of the public, including the plaintiffs' decedent.

18. The plaintiffs, the United States Department of Transportation, authorities in the several States and the general public reasonably relied on Firestone and Goodyear to make full and honest disclosures with respect to the design, production, distribution, warning and instruction of their truck rims and as a result of the foregoing fraudulent misrepresentations plaintiffs' decedent sustained fatal injuries from which he lingered in agony for over three weeks and eventually died to the actual damage of plaintiffs' in the sum of One Million Dollars ($1,000,000.00).

19. As a result of the foregoing fraudulent misrepresentations of Firestone and Goodyear, plaintiffs are entitled to exemplary damages in the sum of Ten Million Dollars ($10,000,000.00).

20. Most of the acts, omissions and misrepresentations of the defendants occurred or were planned at defendants' principal places of business in Akron, Ohio. Plaintiffs request that the Court take judicial notice of the law of the State of Ohio which provides for the recovery of exemplary damages against a corporation for the tortious acts of its agents within the scope of their employment for their failure to redesign or recall a product or to warn the public when they knew the design of the product posed a grave danger to the lives or property of consumers.

WHEREFORE, plaintiffs pray judgment against defendants in Count II in the sum of One Million Dollars

($1,000,000.00) actual damages and Ten Million Dollars ($10,000,000.00) punitive damages and their costs herein expended.

NIEWALD, RISJORD & WALDECK,
By /s/ JOHN C. RISJORD,
JOHN C. RISJORD
Attorneys for Plaintiffs.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury.

Complaint.

In the United States District Court for the Western District of Missouri, Western Division.

Joseph Willie Butler, Individually, Plaintiff, vs. Firestone Tire and Rubber Company, and The Goodyear Tire & Rubber Company, Defendants. Case No. 78-0647-CV-W-2.

Filed Aug. 29 1978.

COMPLAINT

COUNT I.

COMES NOW plaintiff and for Count I of his Complaint, states as follows:

1. Plaintiff is an individual citizen of the State of Mississippi, residing in Leflore County; defendants are corporations organized and existing pursuant to the laws of the State of Ohio with their principal offices for the transaction of their usual business in Akron, Summit County, Ohio, so that defendants are citizens of the State of Ohio and not citizens of Mississippi so there is complete diversity of citizenship between the parties.

2. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, to wit: Twenty-two Million Dollars ($22,000,000.00), and this Court has jurisdiction in the first instance pursuant to Section 1332(a), U.S.C.

3. At all times hereinafter alleged, defendants were duly authorized to transact business in the State of Missouri and have offices and distribution centers for their products in Kansas City, Jackson County, Missouri, within the Western Division of the Western District of Missouri.

4. On or about May 1, 1975, a multi-piece truck rim manufactured by defendants, and assembled and inflated by a person other than the plaintiff exploded at Greenwood, Leflore County, Mississippi, while plaintiff was handling

it on a vehicle causing massive injuries to plaintiff, Joseph Willie Butler, which caused him total and permanent blindness.

5. At the time of the manufacture of the multi-piece truck rim by defendants, said rim was defective in that it had a proclivity to blow apart and explode when put to the use which defendants intended and anticipated, and defendants failed to warn of said defect and failed to recall, retrofit or otherwise remedy design defects and known hazards of its multi-piece rims.

6. At the time of the explosion which blinded plaintiff, the truck rim assembly was in substantially the same condition as when manufactured by defendants, and was being used by plaintiff as the product was reasonably intended to be used and as defendants anticipated its use and because of the aforesaid defect in said assembly, it broke apart and exploded, totally and permanently blinding plaintiff, Joseph Willie Butler.

7. At the time of the design, development, manufacture, distribution, licensing and sale of the subject multi-piece rim assembly and prior to plaintiff's injury, defendants knew that the design, configuration, materials and construction of the multi-piece Firestone and Goodyear rim components presented an extreme and unusual hazard to the motoring public and particularly to anyone attempting to mount an inflated multi-piece assembly on a vehicle. In spite of the existence of known hazards and numerous serious and fatal injuries over a period of some fifty-five years, defendants Firestone Tire & Rubber Company and The Goodyear Tire & Rubber Company negligently, willfully or intentionally,

(a) failed and refused to redesign the multi-piece rims and failed to thereby preclude a mixture of parts;

(b) failed to recall such defective rims from the market

(c) failed to develop, test and distribute safety devices to prevent explosive separation of multi-piece rims;

(d) failed to warn adequately of the hazards involved in every step of the assembly and usage of such rims;

(e) failed to develop any meaningful engineering criteria for determination of proper assembly and the extent of the hazard involved in improper assembly;

(f) failed to notify users of such rims of the risk involved in standing in close proximity to or vehicle mounting of inflated assemblies;

(g) failed to replace the multi-piece assembly with safe rims of single-piece design or of safer multi-piece designs;

(h) failed to advise the United States Department of Transportation of the existence and extreme hazards presented by the defects inherent in multi-piece rims;

(i) failed to notify and fully inform the United States Department of Transportation and state agencies of the existence of the single-piece rim or of safer multi-piece rims as a solution to the problem;

(j) deliberately withheld information and gave misinformation with respect to the nature, extent, cause and serious consequences of the defects in such rims and of the feasibility of recall or retrofit, before, during and after the attempted investigation by the Office of Defects Investigation, United States Department of Transportation, and state agencies of Firestone and Goodyear multi-piece rims, and after being requested or required by the United States Department of Transportation and state agencies to develop and distribute foolproof or safe rims and to distribute adequate, clear and specific warnings with respect to such defects and hazards inherent in multi-piece rims failed to do so in a thorough, timely and specific manner;

(k) failed to discontinue production and failed to adequtely test their multi-piece rims when defendants knew that better, safer products were available and knew that adequate and appropriate tests would establish defects which permit the bursting of the parts of the said rims with resulting injuries or death;

(l) deliberately misrepresented to the Department of Transportation, state agencies, and to the general public the fact that the multi-piece rim was a defective and dangerous design concept remedial only by a total manufacturer's notification campaign, commonly known as recall or retrofit.

8. Plaintiff's left eyeball was traumatically removed and his right eyeball was partially disgorged. He suffered comminuted facial bone fractures with an air passage to his frontal lobe, severe cerebrospinal fluid leak and multiple compound comminuted fractures of the right arm rendering him totally blind and crippled which caused him great pain, mental anguish, psychological and emotional derangement and suffering.

9. Plaintiff has also been deprived of the ability to support and maintain himself and is thereby damaged in the amount of Two Million Dollars ($2,000,000.00).

10. Plaintiff states that the conduct and failures of defendants, Firestone Tire & Rubber Company and The Goodyear Tire & Rubber Company, and their individual officers and employees acting as the agents of Firestone and Goodyear, were in willful, wanton, reckless and grossly negligent disregard for the safety of the public and particularly the plaintiff in that defendants' conduct was motivated solely by profit and convenience without regard to safety or preservation of human life and was oppressive, and as a result of the aforesaid, plaintiff is entitled to exemplary damages in the sum of Twenty Million Dollars ($22,000,000.00).

11. Most of the acts, omissions and misrepresentations of the defendants occurred or were planned at defendants'

principal places of business in Akron, Ohio. Plaintiff requests that the Court take judicial notice of the law of the State of Ohio which provides for the recovery of exemplary damages against a corporation for the tortious acts of its agents within the scope of their employment for their failure to redesign or recall a product or to warn the public when they knew the design of the product posed a grave danger to the lives or property of consumers.

WHEREFORE, plaintiff prays judgment against defendants in Count I in the sum of Two Million Dollars ($2,000,000.00) actual damages, and Twenty Million Dollars ($22,000,000.00) punitive damages and his costs herein expended.

COUNT II.

COMES NOW plaintiff and for Count II of his Complaint, states as follows:

1. Plaintiff is an individual citizen of the State of Mississippi, residing in Leflore County; defendants are corporations organized and existing pursuant to the laws of the State of Ohio with their principal offices for the transaction of their usual business in Akron, Summit County, Ohio, so that defendants are citizens of the State of Ohio and not citizens of Mississippi so there is complete diversity of citizenship between the parties.

2. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interest and costs, to wit. Twenty-Two Million Dollars ($22,000,000.00), and this Court has jurisdiction in the first instance pursuant to Section 1332(a), U.S.C.

3. At all times hereinafter alleged, defendants were duly authorized to transact business in the State of Missouri and have offices and distribution centers for their products in

Kansas City, Jackson County, Missouri, within the Western Division of the Western District of Missouri.

4. On or about May 1, 1975, a multi-piece truck rim manufactured by defendants, and assembled and inflated by a person other than the plaintiff exploded at Greenwood, Leflore County, Mississippi, while plaintiff was handling it on a vehicle causing massive injuries to plaintiff, Joseph Willie Butler, which caused him total and permanent blindness.

5. Plaintiff's left eyeball was traumatically removed and his right eyeball was partially disgorged. He suffered comminuted facial bone fractures with an air psssage to his frontal lobe, severe cerebrospinal fluid leak and multiple compound comminuted fractures of the right arm rendering him totally blind and crippled which caused him great pain, mental anguish, psychological and emotional derangement and suffering.

6. Defendants Firestone Tire & Rubber Company and The Goodyear Tire & Rubber Company, hereinafter referred to as Firestone and Goodyear, and certain executive officers and employees conspiring with each other and with other manufacturers defrauded plaintiff, the United States of America, the several States, state and federal courts, litigants, and the general public for the purposes of avoiding a manufacturers' notification campaign, commonly known as recall or retrofit, and avoiding liability to litigants and claimants killed, blinded, maimed and otherwise injured by multi-piece rims, over a period exceeding fifty years, including specific acts and conduct similar thereto hereafter more fully set forth.

7. POLITICAL SLUSH FUND. Firestone and Goodyear established and utilized political slush funds into which they diverted corporate assets in excess of One Million

Dollars ($1,000,000.00), which were used for illegal purposes including the avoidance of a government investigation, discontinuance of production and a recall campaign of certain multi-piece rims. During the government investigation from 1969 through 1973, Firestone and Goodyear made illegal, domestic political payments, the distribution of which was directed by company executives, which payments were utilized to influence the aforesaid government investigation and proposed action.

8. FALSE REPRESENTATIONS AS TO THE NUMBER AND SEVERITY OF RIM EXPLOSIONS. Firestone and Goodyear deliberately and fraudulently understated and minimized the number of known incidents, claims and lawsuits involving multi-piece rims in testimony and official responses to inquiries by the United States Department of Transportation, investigatory departments of various states and in various lawsuits in state and federal district courts.

9. VEHICLE MOUNTING AND DEMOUNTING HAZARD. Firestone and Goodyear deliberately and fraudulently withheld information from the United States Department of Transportation, the investigatory departments of various states and the federal district courts and state trial courts that multi-piece truck rims of the type which blinded plaintiff have a proclivity for explosion during handling, mounting and demounting on vehicles thereby causing potentially lethal explosions and injury or death to any person attempting to handle, mount or demount an inflated multi-piece rim assembly onto or from a vehicle.

10. WARNING STICKERS. Firestone and Goodyear deliberately and fraudulently conspired between themselves and with others at secret and clandestine meetings at the Mayflower Hotel in Washington, D.C. and elsewhere to remain silent and avoid adequate warning to users of multi-piece truck rim components by failing to attach warning

stickers to rims, by representing that it was impossible to devise a sticker which would be prominent and would adhere to new and existing rims, by abandoning their warning sticker projects for multi-piece rims and encouraging, agreeing and conspiring with each other and other rim manufacturers to abandon existing and proposed warning sticker programs, all for the purposes of avoiding approximately $1,000,000.00 in expense and avoiding the admission of liability for products liability rim explosion cases at the expense of human life and health including that of the plaintiff.

11. SAFETY CAGE AS THE SOLUTION. Firestone and Goodyear deliberately and fraudulently misrepresented that safety cages and other restraining devices would effectively eliminate death and injury from multi-piece rim explosions although they knew that numerous explosions resulting in blinding, maiming, crippling and death were and are occurring during vehicular mounting and demounting, while vehicles are in service and during routine tire maintenance, inflation and deflation of rim assemblies mounted on vehicles, and Firestone and Goodyear deliberately and fraudulently failed to advise and acknowledge that safety cages and restraining devices are useless at such times and would not avoid numerous rim explosion occurrences involving death and serious injury.

12. WARNING AND MATCHING LITERATURE AS THE SOLUTION. Firestone and Goodyear deliberately and fraudulently misrepresented that printed warning materials and rim component matching literature were an alternative solution to the multi-piece rim explosion hazard although Firestone and Goodyear knew that such printed literature and materials rarely reached the ultimate users and tire busters, and that explosion injuries and death would continue regardless of such literature and materials because defend-

ants never intended to distribute the literature promulgated by the federal government, failed to distribute such literature, knew that the literature was difficult or impossible for most users to comprehend, and even if disseminated and comprehended that compliance was impossible, impractical and ineffective in preventing death and injury.

13. RUN FLAT HAZARD. Firestone and Goodyear deliberately and fraudulently failed to disclose the results of tests and complaints indicating that a majority of multi-piece rim assemblies, including the type which blinded plaintiff, become missiles whenever the tire assembled thereon becomes deflated on the highway causing an unreasonable risk to the public which, if fully known to the National Highway Traffic Safety Administration, would have resulted in the promulgation of federal motor vehicle safety standards, recall and retrofit which would have eliminated the subject rim prior to the time it blinded plaintiff.

14. DISTRIBUTION OF WARNING LITERATURE AND CONSPIRACY OF SILENCE. Firestone and Goodyear deliberately and fraudulently withheld information, instructional and warning material and failed to fulfill their promises to the Department of Transportation and their obligations to the public to distribute warning literature and rim matching information.

15. MISMATCH HAZARD. Firestone and Goodyear deliberately and fraudulently misrepresented to the National Highway Traffic Safety Administration, the investigative departments of various states, and the state and federal courts that numerous components of one type or designation can be safely matched with rim components of other types and designation distributed by different manufacturers, that the configuration and specifications of the same or similar rim component parts of the same and of different manufacturers are compatible and safe, and that all extant rims are

clearly, unequivocally and completely identified as to manufacturer, type and size so that the users thereof can safely match them when defendants knew that such representations were false.

16. SINGLE-PIECE RIM AS THE SAFE SOLUTION. Firestone and Goodyear deliberately and fraudulently failed to disclose that they had developed during the 1950s a completely safe single-piece drop center rim for usage on all trucks which if promoted would entirely eliminate the rim explosion hazard and conspired among themselves and with others to keep silent with respect to the development of the state of the art in order to maintain their positions in the truck tire market, which activity was motivated solely by profit and at the expense of life and health of the public, including the plaintiff.

17. The plaintiff, the United States Department of Transportation, authorities in the several States and the general public reasonably relied on Firestone and Goodyear to make full and honest disclosures with respect to the design, production, distribution, warning and instruction of their truck rims and as a result of the foregoing fraudulent misrepresentations plaintiff sustained blinding injuries to the actual damage of plaintiff in the sum of Two Million Dollars ($2,000,000.00).

18. As a result of the foregoing fraudulent misrepresentations of Firestone and Goodyear, plaintiff is entitled to exemplary damages in the sum of Twenty Million Dollars ($20,000,000.00).

19. Most of the acts, omissions and misrepresentations of the defendants occurred or were planned at defendants' principal places of business in Akron, Ohio. Plaintiff requests that the Court take judicial notice of the law of the State of Ohio which provides for the recovery of exemplary

damages against a corporation for the tortious acts of its agents within the scope of their employment for their failure to redesign or recall a product or to warn the public when they knew the design of the product posed a grave danger to the lives or property of consumers.

WHEREFORE, plaintiff prays judgment against defendants in Count II in the sum of Two Million Dollars ($2,000,000.00) actual damages and Twenty Million Dollars ($20,000,000.00) punitive damages and their costs herein expended.

CLIFF EASLEY, JR.,
YANCY & EASLEY,

NIEWALD, RISJORD & WALDECK,
By /s/ JOHN C. RISJORD,
JOHN C. RISJORD
Attorneys for Plaintiffs.

DEMAND FOR TRIAL BY JURY

Plaintiffs demand trial by jury.

Opinion and Order.

Before the Judicial Panel on Multidistrict Litigation.

In re Multi-Piece Rim Products Liability Litigation. Docket No. 362.

OPINION AND ORDER

Before John Minor Wisdom, Chairman, and Edward Weinfeld*, Edwin A. Robson*, Stanley A. Weigel, Andrew A. Caffrey*, Roy W. Harper, and Charles R. Weiner, Judges of the Panel.

Per Curiam.

Filed Jan. 18, 1978.

I. BACKGROUND

This litigation consists of nineteen actions pending in fourteen federal districts. The distribution of these actions is as follows:

Western District of Missouri	4
Northern District of Alabama	2
Eastern District of Michigan	2
Western District of Kentucky	1
District of Maryland	1
District of Massachusetts	1
Southern District of Mississippi	1
District of Nevada	1
District of New Hampshire	1
District of Oregon	1
Western District of Tennessee	1
Northern District of Texas	1
Southern District of Texas	1
Southern District of West Virginia	1

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*Judges Weinfeld, Robson and Caffrey did not participate in the decision of this matter.

These actions have all been brought to recover compensation for personal injuries or wrongful death allegedly resulting from, among other causes, the failure and separation of a multi-piece truck wheel (rim and tire assembly). The complaints in eighteen of these actions allege that a multi-piece rim assembly separated under pressure and flew apart with explosive force during tire inflation, mounting of an inflated wheel on a vehicle, or removal of an inflated wheel from a vehicle. Plaintiffs or plaintiffs' decedents in these eighteen actions were individuals who were in the proximity of the wheel when it separated, either as service persons or bystanders. The complaint in the nineteenth action (the Oregon action) alleges that a multi-piece rim assembly separated during operation of the vehicle on which the rim was being used, causing the vehicle to go out of control and strike an oncoming vehicle containing plaintiff and plaintiff's decedent. In each action, one or more of the following four manufacturers of multi-piece rim components are named as defendants: Firestone Tire & Rubber Co. (fourteen actions), Goodyear Tire and Rubber Co. (eight actions), Kelsey-Hayes Co. (three actions) and Redco Corp. (one action). Either Firestone or Goodyear is a defendant in every action. Besides the four manufacturers of multi-piece rim components, 21 other defendants are named in these actions, nineteen of which are named in only one action and two of which are named in two actions. These additional defendants include, in specific actions, the manufacturer of the tire which was included in the wheel assembly; the employers of plaintiff or plaintiff's decedent; and the manufacturers

and/or owners of the vehicle on which the wheel was located.[1]

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[1]A summary of the specific type of accident alleged and the defendants named in each of the nineteen actions follows:

Name of Action	District	Type of Accident	Defendants
Hale	W.D. Missouri	Rims separated during inflation, striking plaintiff and injuring him	Firestone
Goodwin	W.D. Missouri	Rims separated while wheel was being mounted on a truck, striking and killing plaintiff's decedent	Firestone, Goodyear
Butler	W.D. Missouri	Rims separated while wheel was being mounted on a truck, striking plaintiff and injuring him	Firestone, Goodyear
Walker	W.D. Missouri	Rims separated while wheel was being mounted on a truck, striking plaintiff and injuring him	Firestone, plaintiff's employer
McGee	N.D. Alabama	Rims separated while wheel was being removed from a fork-lift, striking plaintiff and injuring him	Goodyear, tire manufacturer, fork-lift manufacturer, plaintiff's employers
Clayton	N.D. Alabama	Rims separated during inflation, striking plaintiff and injuring him	Firestone, Kelsey-Hayes
Mawby	E.D. Michigan	Rims separated while wheel was being mounted on a vehicle, striking plaintiff and injuring him	Firestone
Johnson	E.D. Michigan	Rims separated after inflation, striking plaintiff and injuring him	Firestone
Henderson	W.D. Kentucky	Rims separated during inflation of a wheel mounted on a vehicle, striking plaintiff and injuring him	Firestone, tire manufacturer, truck manufacturer
Lantieri	D. Maryland	Rims separated while wheel was being mounted on a truck, striking plaintiff and injuring him	Goodyear, tire manufacturer

Plaintiffs allege a number of theories of relief against the various defendants in these actions. The allegations against the manufacturers of multi-piece rim components generally concern defects in the design and manufacture of multi-piece rim components and failure to warn adequately of the risks involved with multi-piece rim assemblies. All parties agree that in some instances multi-piece rim components

Barry	D. Massachusetts	Rims separated during inflation striking plaintiff and injuring him	Firestone
Smith	S.D. Mississippi	Rims separated during inflation, striking plaintiff and injuring him	Firestone, Redco, tire manufacturer, plaintiff's employers
Olsen	D. Nevada	Rims separated during inflation, striking plaintiff and injuring him	Goodyear
Dupuis	D. New Hampshire	Rims separated during removal of a wheel from a truck, striking plaintiff and injuring him	Firestone
Petersen	D. Oregon	Wheel failed while vehicle was being driven, causing vehicle to go out of control and strike an oncoming automobile containing plaintiff and plaintiff's decedent	Firestone, tire manufacturer
Davis	W.D. Tennessee	Rims separated during inflation of a wheel mounted on a vehicle, striking and killing plaintiff's decedent	Firestone, Kelsey-Hayes
Brown	N.D. Texas	Rims separated while wheel was being mounted on a vehicle, striking plaintiff and injuring him	Goodyear, tire manufacturer, plaintiff's employers
Rodriguez	S.D. Texas	Rims separated during inflation of a wheel mounted on a vehicle, striking plaintiff and injuring him	Firestone, Goodyear
Walker	S.D. West Virginia	Rims separated while wheel was being mounted on a vehicle, striking and killing plaintiff's decedent	Goodyear, owners of vehicle

manufactured by different defendants can be used interchangeably.

In addition, the complaints in three of the Missouri actions (*Hale, Goodwin* and *Butler*) allege that Firestone and/or Goodyear 1) failed to advise the United States Department of Transportation of the hazards associated with use of multi-piece rims and intentionally minimized the frequency and severity of personal injuries caused by multi-piece rims in testimony before the Department of Transportation; 2) withheld information from and gave misinformation to the Department of Transportation concerning the feasibility of a recall and retrofit of multi-piece rims; 3) maintained a political slush fund to make illegal payments for the purpose of avoiding a recall of multi-piece rims; and 4) conspired with other manufacturers to withhold the dissemination of adequate safety warnings concerning multi-piece rims.

* * *

IT IS THEREFORE ORDERED that transfer pursuant to 28 U.S.C. §1407 of the actions entitled *Odis Daniel Smith, et al. v. Adams Laboratories, Inc., et al.*, S.D. Miss., C.A. No. J76-228 (N), and *Gladys Fay Petersen v. Michelin Tire Corp., et al.*, D. Oregon, C.A. No. 77-0057, be, and the same hereby is, DENIED, and the Panel's show cause order be, and the same hereby is, VACATED insofar as it relates to these actions.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. §1407, the remaining actions listed on the following Schedule A and pending in districts other than the Western District of Missouri be, and the same hereby are, transferred to the Western District of Missouri and, with the consent of that court, assigned to the Honorable William R. Collinson for coordinated or consolidated pretrial proceedings with the actions listed on Schedule A and pending there.

Schedule A	Docket No. 362
NORTHERN DISTRICT OF ALABAMA	Civil Action No.
Gail McGee, etc., et al. v. Goodyear Tire & Rubber Co., et al.	CA78-P0090S
Thomas Clayton, et al. v. The Firestone Tire & Rubber Co., et al.	CA78-G0396S
WESTERN DISTRICT OF KENTUCKY	
Melton Henderson, et al. v. The Firestone Tire & Rubber Co., et al.	C78-0002-BG
DISTRICT OF MASSACHUSETTS	
Paul R. Barry v. Firestone Tire & Rubber Co.	77-2796-G
SOUTHERN DISTRICT OF MISSISSIPPI	
Odis Daniel Smith, et al. v. Adams Laboratories, Inc., et al.	J76-228 (N)
WESTERN DISTRICT OF MISSOURI	
Larry Hale, et al. v. Firestone Tire & Rubber Co.	78-0266-CV-W-2
Bobby C. Goodwin, et al. v. Firestone Tire & Rubber Co., et al.	78-0408-CV-W-1
Joseph W. Butler v. Firestone Tire & Rubber Co., et al.	78-0647-CV-W-2
Robert E. Walker, et al. v. Firestone Tire & Rubber Co.	75CV363-W-2

DISTRICT OF MARYLAND	
Richard W. Lantieri, et al. v. Goodyear Tire & Rubber Co., et al.	Y78-1469
DISTRICT OF NEVADA	
John L. Olsen v. Goodyear Tire & Rubber Co., et al.	77-0197-HEC
DISTRICT OF NEW HAMPSHIRE	
Patrick Dupuis v. Firestone Tire & Rubber Co.	C-76-321
WESTERN DISTRICT OF TENNESSEE	
Marion Taylor Davis, et al. v. Firestone Tire & Rubber Co., et al.	C-78-2182
NORTHERN DISTRICT OF TEXAS	
Joe B. Brown, etc. v. Goodyear Tire & Rubber Co., et al.	CA3-78-0556-D
SOUTHERN DISTRICT OF TEXAS	
Luciano Rodriguez, etc. v. Firestone Tire & Rubber Co., et al.	H-77-288
SOUTHERN DISTRICT OF WEST VIRGINIA	
Madlyn Walker v. Chemical Leaman Tank Lines, Inc., et al.	76-0350CH
EASTERN DISTRICT OF MICHIGAN	
Edward & Maxine Mawby v. Firestone Steel Products Co.	870616

Larry Johnson v. Firestone Tire & Rubber Co., Inc.	871602
DISTRICT OF OREGON	
Gladys Fay Petersen v. Michelin Tire Corp., et al.	77-0057

First Pretrial Order.

In the United States District Court for Western District of Missouri, Western Division.

IN RE: MULTI-PIECE RIM PRODUCTS, LIABILITY LITIGATION. M.D.L. Docket No. 362.

Filed Apr. 23 1979.

FIRST PRETRIAL ORDER

* * *

IV. Lead and Liaison Counsel

Plaintiffs have agreed upon a Steering Committee. In a letter to the Court dated April 10, 1979, Mr. Risjord advised "that counsel for plaintiffs who attended the first pre-trial conference agreed that in order to meet expenses of the common discovery there should be an initial assessment of $1000.00 per case filed. . . . It was agreed that the advanced monies should be deposited by liaison counsel in a separate bank account and that liaison counsel shall have authority to pay for transcripts, reimburse travel expenses and similar expenses incurred in common discovery. It is proposed that these transactions be maintained by liaison counsel on a separate ledger available for examination by all plaintiffs' counsel and an accounting report of such receipts and expenditures be made periodically to the Court." This agreement is approved. The reports shall be made quarterly. The first report shall be due September 30, 1979. The Steering Committee for plaintiffs shall consist of Messrs. Easley, Mathis, Mims, Risjord, Roden, Shulman and Stites. Mr. Risjord is lead and liaison counsel.

Mr. William Freivogel is lead counsel for The Firestone Tire and Rubber Company. Mr. William H. Sanders is liaison counsel. Mr. Alvin D. Shapiro is lead and liaison counsel for the Goodyear Tire and Rubber Company. Mr.

Robert Raymond is lead and liaison counsel for The Kelsey-Hayes Company. Mr. Thomas Wheatley is lead and liaison counsel for The Budd Company.

The non-manufacturing defendants have elected not to appoint a steering committee or to designate lead counsel. Mr. Paul Scott Kelly is liaison counsel for these non-manufacturing defendants. Mr. Kelly does not have the authority to represent any party for which he is liaison counsel only on any substantive matter. His powers and duties shall be those set forth in the "Suggested Procedural Plan of Certain Defendants for Implementation at First Pre-Trial Conference." The expenses of liaison counsel shall be shared equally by all parties for whom Mr. Kelly acts as liaison counsel. Liaison counsel is directed to present an account of his fees and expenses on a quarterly basis. The first report is due September 30, 1979.

The Court will not approve any remand, settlement, or judgment of dismissal without a showing that the involved parties have reimbursed the appropriate liaison counsel for expenses and services rendered to that date. Service of documents required by Rule 5, Fed. R. Civ. P., will be made by service on all liaison counsel.

* * *

It is so ordered.

/s/ W. R. Collinson
District Judge.

Dated: April 23, 1979

Deposition.

(Title Omitted in Printing).

In the United States District Court for the Western District of Missouri, Western Division.

[Cover page]

CONTINUED DEPOSITION OF JOHN RISJORD, produced, sworn and examined, pursuant to Notice to Take Depositions, on Friday, the 18th day of May 1979, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day, at the law offices of Blackwell, Sanders, Matheny, Weary & Lombardi, 600 Five Crown Center, in the City of Kansas City, County of Jackson and State of Missouri, before me.

MARY ALLEN SPALDING,
Registered Professional Reporter

and Notary Public within and for the County of Jackson, State of Missouri, in a certain cause now pending in the United States District Court for the Western District of Missouri, Western Division, IN RE: Multi-Piece Rim Products Liability Litigation, on behalf of Defendant The Firestone Tire & Rubber Company.

A P P E A R A N C E S:

For the Witness:

Niewald, Risjord & Waldeck
2500 Commerce Tower
911 Main Street
Kansas City, Missouri 64105
By: JOHN C. RISJORD & DANNY L. CURTIS
RONALD J. STITES
1050 Home Savings Building
1006 Grand Avenue
Kansas City, Missouri 64106

[Page 11, line 1 through page 11-A, line 4].

For the Firestone Tire & Rubber Company:

Blackwell, Sanders, Matheny, Weary & Lombardi
Five Crown Center, Suite 600
2480 Pershing Road
Kansas City, Missouri 64108
By: WM. H. SANDERS & JAMES M. WARDEN

Ross, Hardies, O'Keefe, Babcock & Parsons
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Chicago, Illinois 60611
BY: WILLIAM FREIVOGEL

For Goodyear:

Stinson, Mag, Thomson, McEvers & Fizzell
2100 TenMain Center
P.O. Box 19251
Kansas City, Missouri 64141
By: ALVIN D. SHAPIRO &
PAUL E. DONNELLY

Field, Gentry, Benjamin & Robertson
600 East 11th Street
Kansas City, Missouri 64106
By: DAVID OLIVER

For Kelsey-Hayes:

Shughart, Thomson & Kilroy
9th Floor, Commerce Bank Building
922 Walnut Street
Kansas City, Missouri 64106
By: ROBERT RAYMOND

For the Budd Company:

Lathrop, Koontz, Righter, Clagett,
Parker & Norquist
Suite 2600, 2345 Grand Avenue
Kansas City, Missouri 64108
By: THOMAS J. WHEATLEY

For General Motors Corp.:

Strasburger & Price
One Main Place
Dallas, Texas 75250
By: ROLAND C. ANDERSON & ERNEST R. HIGGINBOTHAM

For Michelin:

Jackson & Sherman
820 Home Savings Building
1006 Grand Avenue
Kansas City, Missouri 64106
By: JOSEPH A. SHERMAN

[Page 11-B lines 1 through 13]

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EXHIBITS		MARKED
No. 1	Copy of Rule 24	21
No. 2	Disciplinary Rules, Missouri Bar Judiciary	26
No. 3	Copy of newspaper article from Kansas City Times	56
No. 4	Newspaper article from Kansas City Times	57
No. 5	Letter to Ms. Lynne Smith from Danny L. Curtis, dated 10-27-77	91
Nos. 6 through 39, inclusive	No exhibits were identified in the record except Exhibit No. 32, which consisted of two pages from Martindale-Hubbell	92

[Page 12, line 1 through page 13, line 8]

THE REPORTER: I would like to have everybody's appearance, please.

Mr. Sherman, would you start first?

MR. SHERMAN: I am Joseph A. Sherman. I am appearing here for Michelin Tire.

MR. RAYMOND: Robert Raymond, for Kelsey-Hayes Company.

MR. SHAPIRO: I am Alvin Shapiro, for Goodyear.

MR. OLIVER: David Oliver, for Goodyear.

MR. DONNELLY: Paul Donnelly, for Goodyear.

MR. WARDEN: James Warden, Firestone.

MR. FREIVOGEL: William Freivogel, Firestone.

MR. WHEATLEY: Tom Wheatley, for the Budd Company.

MR. ANDERSON: Roland G. Anderson, G.M.

MR. HIGGINBOTHAM: Ernest Higginbotham, G.M.

MR. SANDERS: Danny?

MR. CURTIS: Dan Curtis, plaintiffs' attorney; Niewald, Risjord & Waldeck.

MR. SANDERS: Ronald?

MR. STITES: Ronald Stites, plaintiffs' attorney.

MR. SANDERS: For the purpose of the record, we are resuming the deposition of April 15th, 1979, of John Risjord.

JOHN RISJORD

having been previously sworn, testified further as follows:

EXAMINATION BY MR. SANDERS:

* * *

[Page 20, line 7 through page 21, line 7].

Q When were you admitted to the bar of the State of Missouri?

A 1958; April.

Q When were you admitted to the bar of the Western District of Missouri?

A Sometime that year.

Q Are you a member of the bar of the Eighth Circuit?

A I don't know that I am. At least, I don't believe I've been formally introduced to the Eighth Circuit.

Q Would you state for the record your practice in any area that you specialize in?

A Well, I practice civil trial law.

Q You consider yourself, then, a litigation or a trial lawyer?

A I suppose so.

Q How long have you engaged in that area?

A Now, I picked my first jury about two months after admission of practice, so that would be 21 years.

Q So you've tried lawsuits at least 20 years?

A 21 years.

Q You've practiced in the Western District of Missouri, United States District Court, for at least 20 years?

A Yes.

* * *

[Page 92, line 15 through page 93, line 22].

MR. SANDERS: Mark all of these exhibits, will you, in that order?

(RISJORD DEPOSITION EXHIBITS NOS. 6 THROUGH 39, INCLUSIVE, WERE MARKED FOR IDENTIFICATION.)

Q (By Mr. Sanders) I hand you Exhibits 6 through 39, and I'll ask you to look at those exhibits.

(Whereupon, proceedings were had off the record.)

Q (By Mr. Sanders) I hand you Exhibits 6 through 39. Notwithstanding your refusal to answer any documents—to answer any questions—about the document that was Exhibit 6, will you testify as to any other document, 7 through 39?

A Yes.

Q Which ones?

A Exhibit 32

Q All right. That is, for the purposes of identification—

A Seems to be a copy of our—

Q —Page 170B and 171B of Martindale-Hubbell?

A I don't know the page numbers, but it appears to be our card in the back of Martindale—

THE REPORTER: I couldn't hear the last you said. "It appears to be our card"—

THE WITNESS: Card.

THE REPORTER: Of?

MR. CURTIS: In the back of Martindale-Hubbell.

THE WITNESS: In the back section of Martindale and Hubell, my law firm's listing.

* * *

[Page 99, line 18 through page 107, line 25].

Q Now, I turn to the one exhibit between 6 and 39 that you stated that you would testify to, and that's Exhibit 32, correct?

A What's the question?

Q I said—

A You turned to it, is that the question?

Q Well, I've turned to Exhibit 32. You've said you would testify as to Exhibit 32, have you not?

A Yes.

Q All right. Now, I notice on the second page in this Martindale-Hubbell listing you list your representative insurance clients, true?

A Yes.

Q And you list as your first-named client the Home Insurance Company, true?

A The Home Insurance Company is listed; and they—under the category of "Representative Insurance Clients," they are the first.

Q And you have listed the Home Insurance Company as your client for many, many years in the Martindale-Hubbell Law Directory, have you not?

A I don't know.

Q The current Martindale-Hubbell Law Directory shows the Home Insurance Company is your first-named representative insurance client, does it not?

A Well, you represented, I thought, Exhibit 32 to be the current one, and if it is, that's true. If it's not, my judgment is, we probably list them, and whether they are first or what, I don't know.

Q How long has your firm represented the Home Insurance Company?

A The Home Insurance Company, my understanding, was a fire insurance company. We represented the Home Insurance Company—Fire Insurance Company—periodically, probably as long as I have practiced law.

Q Some 21 years?

A But I—yes. But I distinguish that from the Home Indemnity Company, which writes their casualty business, and I last did any legal work for the Home Indemnity Company when I last worked for Lowell Knipmeyer which is about 19 or 20 years ago.

Q The Home Insurance Company that you list have their corporate headquarters on Maiden Lane, in Manhattan and New York City, do they not?

A I don't know, but I suspect it's still there. At one time, they had it there.

Q Their claims office is located in your building, the Commerce Towers, is it not?

A Their local—I don't know what you call it, regional, whatever—claim office is in the Commerce Tower.

Q And that is the Home Insurance Group that has their claim office in your building?

A I think that's correct. I'm not absolutely sure whether it's the Home Group or not.

Q Larry Wagner is the claims manager?

A Was the last time I heard.

Q Bob Ozias, O-z-i-a-s, is the assistant claims manager, isn't he?

A I'm not aware of that. I know Ozias, and I know that he works for them. I thought he was their workmen's compensation man.

Q You do work for both of those—you have been associated in your representation of the Home with both Mr. Wagner and Mr. Ozias, have you not?

A I don't think so. I can't be absolutely sure—

Q It has been with Mr. Wagner, then?

A —but I doubt it. As far as I know, Joe Sherman does Ozias' comp work—his office does—and probably some of the casualty defense work, and I—I have no recollection of working directly with Wagner. I have one presently at hand—one matter—for the fire insurance company, and you know all about that, because you represented me in the same action.

Q You're talking about the—

A I'm talking about you, Bill Sanders.

Q Yes. But you're talking here about the litigation where you're suing on subrogation for the fire of a building, are you not?

A No.

Q It arises—the case with Mr. Berman?

A No.

Q What case are you referring to?

A Canova against the—a group of insurance companies, including the Home.

Q That's the case I had in mind. Mr. Berman, I believe, is the lawyer for Canova?

A No. Gene DeLeve, his partner, is one of the lawyers.

Q In your saying that I represented you there, you were referring to the fact that a—you were joined as a defendant in that action, you made demand upon your errors and omissions carrier, the St. Paul Fire & Marine, to furnish you with a defense, I was employed by the St. Paul Fire & Marine, and several years ago that action was dismissed as against you and your firm, isn't that correct?

A Is that a question?

Q Yes, sir.

A Well, that's quite a mouthful. In the first place, the action was not dismissed. I don't know what it has got to do with this lawsuit.

Q I say the action is against you for alleged libel?

A It was a suit instituted against both the insurors and my law firm, including myself, for alleged libel.

Q A motion to dismiss was filed as against you and your firm, and that motion to dismiss you and your firm was sustained, isn't that true?

A No, sir, it's not quite true. There was a motion for summary judgment filed by you, and that motion was argued, I think, by Larry McMullen, of your office, and successfully.

Q By "successfully," you mean—

A It was sustained.

Q —the summary judgment was sustained.

So you're not a party to that case any more. You continue to act as attorney for the various insurers?

A I'm not arguing with you about that.

Q And you're there representing the Home Insurance Company?

A Yes. And you learned the extent of my representation of the Home Insurance Company by the confidential relationship that we were compelled by the St. Paul Fire & Marine to enter into.

Q Well, your representation of the Home Insurance Company is not only a part of your Martindale-Hubbell listing, but the Home Insurance Company was a named defendant, was it not?

A It still is.

Q All right. And you were the attorney of record for the Home?

A That's correct.

Q You're not claiming there was anything confidential about the fact that you represented the Home in that lawsuit when you signed as the attorney of record for the Home—signed pleadings on behalf of the Home—you're not claiming that's a confidential record, are you?

A No. But I am astounded at your representation to the court that you just recently learned that I represented the Home Insurance Company—

Q You're saying—

A —since you represented me four years ago, and I explained the whole situation to you in a meeting we had in my office.

Q Now, over the last 10 years, describe to us the matters that you have handled for the Home Insurance Group.

A My best recollection is that I have just described it. I've had one case, that I can recall, in the last 10 years in which the Home Insurance Company is one of probably—

Q The Home Insurance Group or any member of it.

A The Home Insurance Company is one of probably six company defendants, and that's the—my recollection of the extent of it. It may be that one or more of my partners have from time to time done other work for the Home Insurance Company, but I sure can't tell you what it would be.

Q How long do you keep your files?

A Depends on the file.

Q Do you have a place where you keep retired files?

A These rim cases, I'm going to keep them forever.

Q Do you have a place where you store closed files?

A Yes.

Q And by checking those closed files, you could determine the nature and identification of the matters where over

the last 10 years you've represented the Home Insurance Group or any member thereof?

A Well, it wouldn't be accurate; because we don't keep them all for 10 years.

Q But it would give us an indication of some of the cases that you handled for members of the Home Insurance Group, would it not?

A Well, yes. If—for instance, if they have been involved in a major fire, there's a good likelihood that I would retain or the office would retain that file for 10 years. But I can assure you that I was totally unaware that the Firestone Tire & Rubber Company was ever insured or reinsured by the Home Insurance Company—

A You, of course—

A —and I have never, ever—and I have searched my recollection about this since you raised this question—I have no recollection of ever doing anything on behalf of any insurer for the Firestone Tire & Rubber Company or any subsidiary or affiliated company. The only way I know they were even insured was your representation of that fact.

* * *

[Page 110, lines 3-5 and page 110, line 25 through page 111, line 1].

Q. Have you furnished information on the alleged hazards of multi-piece rims to the Home Insurance Company?

* * *

A. I have not furnished anything to the Home Insurance Company.

* * *

[Page 115, line 11 through page 120, line 19].

Q Your Martindale-Hubbell listing, that we've seen in

evidence, gives the Home Insurance Company as your first-named company. You'll agree that that gives the appearance that you represent the Home Insurance Company?

A I'll agree that I do represent the Home Insurance Company in one matter; and, yes, that gives the appearance that we do represent them. The order in which they're listed, as I'm sure you know, is not indicative of anything, except that Martindale-Hubbell can't alphabetize.

Q You elected, however, to state the Home as your first-named representative insurance client?

A No.

Q Who made that election?

A I don't have the slightest notion.

Q All right. A—

A I had an election about it, and I've done it in proofs time and again; I have written, "Why don't you alphabetize the list," but they never do.

Q All right. Martindale-Hubbell—

A I don't say they never do; they haven't changed our format to alphabetize—

Q Martindale-Hubbell each year sends you a proof before it's printed, do they not?

A Yes.

Q And you look at that proof?

A Yes.

Q And the proof tells you to make any corrections that you deem appropriate?

A Yes.

Q And you have approved the Martindale-Hubbell listing as it was set forth in the proof and as it was later published, isn't that right?

A I doubt it.

Q Well, who has, in your firm?

A Well, I see the proof and comment on the proof, but that doesn't mean I approved it. And I did, for some time, attempt to get them to list the thing in some semblance of order—

Q Have you ever asked—

A —but after a few years of requesting that and not getting anywhere, you tend to give up.

Q You've never suggested to Martindale-Hubbell that they delete the Home Insurance Company as a representative insurance client?

A I can't say that I ever have or have not; I probably have not.

Q Now, have you handled for the Home Insurance Group, or any member thereof, matters that did not relate to fire insurance, but some other form of insurance?

A Well, as I told you, Lowell Knipmeyer and Glenn McCann have been the lawyers for the Home Indemnity, and primarily, the lawyers for the Home Insurance Company, for many years, that I know of. And when I worked there, about the first year of practice before I went in the service, I suppose I probably did some work for other—

Q All right. Had you—

A —company members, I'm sure the Home Indemnity, for instance, which is the casualty company. I have no recollection since that time, in the past, say, 19 years, of representing them. It's possible, but doubtful. I know that I've had a number of cases against them, including the defense of a case brought by Joe Sherman on their behalf, and not too long ago.

Q Then, if the Home Insurance Company is a company identified on the Firestone policy, you would be representing the same company that insures Firestone, would you not?

A Well, I represent the Home Insurance Company in one case involving a fire, property—first-party claim on a policy—and I don't know what connection the Firestone Tire & Rubber Company has with them. I can't speculate about it.

Q And I ask you to state over the last 10 years how many matters your law firm has handled for the Home Insurance Company?

A I can't—I do not know. It would be a very, very minimal number.

But on fires, for instance, or explosions, this type of catastrophe, where the amount of property damage is substantial, the stock insurance companies habitually split the risk, and so one tends, even though you may be initially employed by a steady client, you may represent a company for that purpose that really is the client of another law firm, simply because the companies have a custom in the insurance industry to go along with the selection of counsel made by the company that has the—that they call the lead company, which is the one that has the most insurance coverage—

Q In Exhibit—

A —and I'm sure that's the way I happened to be representing the Home Insurance Company in the one case in question.

Q In Exhibit 32, I see that your representative insurance clients are not in alphabetical order?

A I think that's established.

Q And the way your proof is submitted to Martindale-Hubbell, the Home Insurance Company is shown as the first-named insurance client?

A I don't know; but I would—could only assume that that is true, since they printed it that way.

Q You had a lawyer-client relationship, then, with the Home Insurance Company on various occasions?

A On several occasions, at least.

Q And in that capacity, you had occasion to learn something about the way the Home Insurance Company undertakes to represent its policyholders in litigation?

THE WITNESS: Let me have that again.

(Whereupon, the reporter read the pending question.)

A No, I don't think so.

Q (By Mr. Sanders) One last question—

A I don't have any recollection in the past 19 or 20 years of ever defending any Home Insurance Company insured; it's possible, but I don't know anything—

Q How about your law firm?

A —about the policy.

Q How about other members of your law firm?

A Well, I don't—I suppose it's possible that they have, but I'm unaware of it.

* * *

[Exhibit No. 32]

NIEWALD, RISJORD & WALDECK
A Professional Corporation
2500 COMMERCE TOWER
KANSAS CITY, MISSOURI 64105
Telephone:
(816) 842-3512
General Civil, Trial and
Appellate Practice
Corporation, Insurance,
Probate, Tax and
Estate Planning Law

Paul H. Niewald, born Kansas City, Missouri, April 11, 1929; admitted to bar, 1954, Missouri. Preparatory education, University of Missouri; legal education. University of Missouri (LL.B., 1954). *Fraternity:* Phi Delta Phi. *Member:* Lawyers Association of Kansas City; Kansas City and American. (Member, Section, Insurance Negligence and Compensation Law) Bar Associations; The Missouri Bar.

John C. Risjord, born Manitowoc, Wisconsin, November 7, 1933; admitted to bar, 1958, Kansas and Missouri Preparatory education. College of William & Mary (A.B., 1955); legal education, College of William & Mary and University of Wisconsin (LL.B., 1957). Vice Chairman, Fire and Inland Marine Insurance Committee of the Federation of Insurance Counsel, 1968—. *Member;* Kansas City and American (Member, Section Insurance, Negligence and Compensation Law; Vice-Chairman, Committee on Publications, 1970-1974; Property Insurance Committee Insurance Section, 1974—) Bar Associations: The Missouri Bar; Lawyers Association of Kansas City.

Michael E. Waldeck, born Eureka, Illinois, September 14, 1940; admitted to bar, 1965, Missouri. Preparatory ed-

ucation, Bradley University (B.S., 1962); legal education, University of Missouri (J.D., 1965). *Fraternity:* Phi Delta Phi. *Member:* Lawyers Association of Kansas City; Kansas City and American (Member, Section on Insurance Negligence and Compensation Law) Bar Associations; The Missouri Bar.

Danny L. Curtis, born Bragg City, Missouri, August 20, 1944; admitted to bar, 1973, Missouri. Preparatory education, Southeast Missouri State College (B.S. in B.A., 1970); legal education, University of Missouri at Kansas City. (J.D., 1973). *Fraternity:* Phi Delta Phi. *Member:* Kansas City and American Bar Associations; The Missouri Bar.

Stephen S. Brown, born Kansas City, Missouri, March 14, 1946; admitted to bar, 1971, Missouri, Preparatory education, University of Missouri (B.S.B.A., 1968); legal education, University of Missouri (J.D., 1971). *Fraternity:* Phi Delta Phi. Staff Member, University of Missouri Law Review, 1970-1971. *Member:* Kansas City and American Bar Associations; The Missouri Bar.

John L. Hayob, born Marshall, Missouri, March 21, 1950; admitted to bar, 1975, Missouri. Preparatory education, Rockhurst College (A.B., 1972); legal education, University of Missouri at Kansas City (J.D., 1975). *Fraternities:* Alpha Sigma Nu; Phi Alpha Delta. *Member:* The Missouri Bar.

Ronald K. Barker, born Lexington, Missouri, September 21, 1946; admitted to bar, 1976, Missouri. Preparatory education, University of Missouri (B.S., 1968; M.A., 1970); legal education, University of Missouri (J.D., 1976). *Fraternity:* Phi Alpha Delta (Vice Justice, 1975-1976). Member, Moot Court Board. Law Clerk to Judge James A.

Finch, Jr., Supreme Court of Missouri, 1976-1977. *Member:* Kansas City and American (Member, Sections on: Litigation; Local Government Law) Bar Associations; The Missouri Bar (Member, Young Lawyers Section); The Association of Trial Lawyers of America.

OF COUNSEL

George G. Allen, Jr., born Kansas City, Missouri, August 22, 1940; admitted to bar, 1967, Missouri. Preparatory education, University of Missouri at Kansas City (B.A., 1966); legal education University of Missouri at Kansas City (J.D., 1966). *Fraternity:* Phi Alpha Delta. *Member:* Kansas City Bar Association (Member, Committee on Workmen's Compensation, 1973-1974); The Missouri Bar (Member, Committee on Workmen's Compensation, 1971-1974); The Association of Trial Lawyers of America.

REPRESENTATIVE GENERAL CLIENTS: Southwest Grease & Oil Co.; Builders Hardware and Appliance Co.; City Volkswagen, Kansas City, Kansas; Jenkins & Blaine Construction Co., Kansas City, Missouri; Johnnie Walker Medical Electronics, Inc., Raytown, Missouri; Merriam Volkswagen, Merriam, Kansas.

REPRESENTATIVE INSURANCE CLIENTS: The Home Insurance Co.; Crum & Forster Group; Republic-Vanguard Insurance Co.; Great American Insurance Co.; Royal-Globe Insurance Group; The Hanover Insurance Group; Firemens Fund-American Insurance Group; Consolidated Mutual of Brooklyn, New York; Grain Dealers Mutual Insurance Co.; Insurance Company of North America; Mill Mutuals; Millers Mutual of Alton, Illinois; New Hampshire Insurance Co.; Northwestern National Insurance Co.; State Farm Fire Insurance Co.; Commercial Union and North British Group; Sentry-Hardware Group; American States Insurance Co.; Hartford Fire Insurance Co.; Continental National American

Group; Chubb/Pacific Indemnity Group; The Aetna Insurance Co., Shawnee Mission, Kansas; Aetna Life and Casualty Cos., Kansas City, Missouri; A.F.I.A. World Wide Insurance, New York, N.Y.; Atlantic Cos., Kansas City, Missouri; Cravens, Dargen & Co., Special Risks, Houston, Texas; Holiday Inns of America, Memphis, Tennessee; Industrial Indemnity Co., Dallas, Texas; Market Facilities, Inc., Los Angeles, California; Safeway Stores, Kansas City, Missouri; Skaggs Drug Co., Salt Lake City, Utah; State Security Insurance Co., Edwardsville, Illinois; Utica Mutual Insurance Co., Utica, New York; Western Casualty & Surety Co., Kansas City, Missouri.

REFERENCE: Commerce Bank of Kansas City, N.A.

Motion.

(Title Omitted in Printing)

In the United States District Court for the Western District of Missouri, Western Division.

MOTION OF THE FIRESTONE TIRE & RUBBER COMPANY TO DISQUALIFY JOHN C. RISJORD.

Filed: May 24, 1979.

Defendant, The Firestone Tire & Rubber Company ("Firestone"), by its attorneys, hereby moves the Court for entry of an order that John C. Risjord, the law firm of Niewald, Risjord & Waldeck, and all its partners and associates, be disqualified from further representing plaintiffs in multipiece rim cases against Firestone in which The Home Insurance Company (hereinafter, "Home") insures Firestone or in which information obtained from Home could be useful to plaintiffs.

In support of this motion Firestone attaches the Affidavits of John B. Carothers III and JuliAnn Canto and its Brief and Suggestions. In further support of this motion Firestone submits the opinion, in affidavit form, of Professor Ronald Rotunda of the University of Illinois, an expert on codes of professional responsibility for lawyers. Each affiant will be made available for deposition on these issues at the request of any party and will appear at any hearing requested by the Court.

DATED: May 23, 1979

/s/ William Freivogel,
William Freivogel, an *Attorney for The Firestone Tire & Rubber Company,*

William Freivogel,
Ross, Hardies, O'Keefe,
Babcock & Parsons,

Brief and Suggections.

(Title Omitted in Printing)

In the United States District Court for the Western District of Missouri, Western Division.

Filed: May 24, 1979.

BRIEF AND SUGGESTIONS IN
SUPPORT OF MOTION OF THE
FIRESTONE TIRE & RUBBER COMPANY TO
DISQUALIFY JOHN C. RISJORD

* * *

John A. Risjord is a partner in Niewald, Risjord & Waldeck, a Kansas City, Missouri firm of seven lawyers and one of counsel. See IV Martindale-Hubbell Law Directory 172B-173B (1979). In that law directory the firm lists two types of clients, "Representative General Clients" and "Representative Insurance Clients." In that latter category his firm lists The Home Insurance Co. as one of the firm's insurance clients. In fact, Home is listed first, out of alphabetical order and ahead of over 30 other "representative insurance clients." Moreover, the relationship between Mr. Risjord's law firm and Home is a long-standing one. Home is also listed first out of alphabetical order, as an insurance client, of a firm in which Risjord is a member, in every listing in Martindale-Hubbell, from the very latest volume, in 1979, all the way back to 1960. Even though the name of the firm or its membership may change, two items are constant, Risjord as a counsel in the firm and Home as the

first listed (and therefore presumably the most important) insurance client.[1]

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[1]See, e.g., IV Martindale-Hubbell 170B-171B (1978);
III Martindale-Hubbell 1855B (1977);
III Martindale-Hubbell 1771B (1976);
III Martindale-Hubbell 1652B-1653B (1975);
II Martindale-Hubbell 3686B-3687B (1974);
II Martindale-Hubbell 3360B (1973) (firm name now called Gordon, Adams, Niewald & Risjord);
II Martindale-Hubbell 3197B-3198B (1972);
II Martindale-Hubbell 3072B (1971);
II Martindale-Hubbell 2906B-2907B (1970);
II Martindale-Hubbell 2726B-2727B (1969);
II Martindale-Hubbell 2562B-2563B (1968);
II Martindale-Hubbell 1387B-1388B (1967);
II Martindale-Hubbell 1199B (1966);
II Martindale-Hubbell 3903-3904 (1965);
II Martindale-Hubbell 3635-3636 (1964) (firm now called Gordon, Sanders, Adams & Niewald; Risjord listed as one of the attorneys in the firm);
II Martindale-Hubbell 3373-3374 (1963);
II Martindale-Hubbell 3169-3170 (1962) (firm now called Sanders & Niewald; Risjord listed as one of the attorneys in the firm);
II Martindale-Hubbell 2939-2940 (1961) (firm now called law offices of Lewis W. Sanders; Risjord is listed as an attorney in the firm);
II Martindale-Hubbell 2721 (1960).

In 1959, Risjord is listed as an associate in a firm called Knipmeyer, McCann & Sanders. In a listing of corporations to which the firm is "Local Insurance Counsel", Home Insurance Co. is not listed at all, but the fourth listed client is Home Indemnity Co. II Martindale-Hubbell 2513-2514 (1959).

In 1958, John Risjord is not listed in Martindale-Hubbell for Kansas City, Missouri. He was admitted to the Kansas and Missouri bars in 1958.

Affidavit.

State of Illinois, County of Champaign—ss.

Affidavit of Ronald D. Rotunda in Support of Firestone's Motion to Disqualify John C. Risjord and his Firm.

Ronald D. Rotunda, being duly sworn, states as follows:

1. He is Associate Professor of Law, College of Law, University of Illinois, Champaign, Illinois 61820. His office phone number is (217) 333-3459.
2. He received his B.A., magna cum laude, from Harvard College in 1967; he received his J.D., magna cum laude, from Harvard Law School in 1970. He was assistant professor of law at the University of Illinois College of Law from 1974-77, when he was appointed associate professor of law. He was elected to the American Law Institute in December, 1977. He is also a member in good standing of the New York, Washington, D.C., and Illinois bars, and also a member of the American Bar Association and the District of Columbia Bar Association.
3. For several years at Illinois he has taught a course in Legal Ethics. The book that he uses is Morgan & Rotunda, *Problems and Materials on Professional Responsibility* (Foundation Press, 1976), with a 1978 Supplement (Foundation Press, 1978). During late summer, 1979, the 1979 Cases and Materials Supplement and the 1979 Statutory Supplement will also be published. *Problems and Materials on Professional Responsibility* is in use in approximately 60 law schools.

   He has authored or coauthored over 20 articles published in various law reviews, such as Harvard, Columbia, Virginia, Northwestern, Illinois, Texas, U.C.L.A., Georgetown, George Washington, and Cal-

ifornia (Berkeley). Those publications which relate in whole or in part to the question of legal ethics include:

The Public Interest Appellant: Limitations on the Right of Competent Parties to Settle Out of Court, 66 Nw. U. L. Rev. 199 (1971);

The Combination of Functions in Administrative Actions: An Examination of European Alternatives, 40 Ford. L. Rev. 101 (1971);

Book Review of Monroe Freedman's, Lawyers' Ethics in an Adversary System, 89 Harv. L. Rev. 622 (1976);

The Commercial Speech Doctrine in the Supreme Court, 1976 U. Ill. L. Forum 1080 (1976) (correctly predicting the Supreme Court opinion in Bates v. State Bar);

Commercial Speech and the First Amendment, 1 The Collegiate Forum 8 (Fall, 1977) (published by Dow Jones & Co. Inc.);

The First Amendment Now Protects Commercial Speech, 10 The Center Magazine: A Publication of the Center for the Study of Democratic Institutions 32 (May/June 1977);

The Word "Profession" is Only a Label—And Not A Very Useful One, 4 Learning and the Law 16 (Summer, 1977) (publication of the A.B.A. Section on Legal Education and Admissions to the Bar).

In addition, he wrote Chapter 7, "Law, Lawyers, and Managers" in *The Ethics of Corporate Conduct*, a book edited by Clarence Walton (Prentice-Hall 1977). The book collects the papers presented for the 52d American Assembly at Arden House, Harriman, N.Y., April, 1977. The American Assembly is affiliated with Columbia University. He also participated in that American Assembly.

He has also coauthored a one volume treatise, *Constitutional Law* (West Publishing Co. 1978:, with Professors Nowak and Young). Parts of the book deal with the free speech issues related to legal advertising and solicitation. He has also published a *1978 Supplement* to this Constitutional Law Handbook, and a *1979 Supplement* will be published early this fall.

He has also attended various conferences on legal ethics and given various papers on the subject around the country, and he has been involved with various A.B.A. programs and projects dealing with legal ethics. For example, in June 1978 he was on the faculty for the A.B.A. National Workshop on Disciplinary Law and Procedure; similarly he will be on the faculty for the June, 1979 ABA Workshop on Disciplinary Law and Procedure; in 1976 he participated in five videocassettes on legal ethics sponsored by the A.B.A. Consortium for Professional Education.

He is a member of the Board of Editors of the Corporation Law Review. For that journal he coauthors a series of articles dealing with the rights, duties (including ethical duties), and liabilities of corporate officers and directors.

He is presently working on a one volume treatise on legal ethics.

4. He has been retained by The Firestone Tire & Rubber Co. to render an opinion upon whether John C. Risjord and his firm may ethically participate in the cases against Firestone consolidated herein. He provided all the authorities on conflicts of interest incorporated in Firestone's Brief and Suggestions.

5. It is his opinion based in the facts contained in Firestone's Brief and Suggestions, the Code of Professional Responsibility, and the case law that the relationship between John C. Risjord and The Home Insurance Co.

constitutes a conflict of interests and a consequent appearance of impropriety which compels his and his firm's disqualification in those cases consolidated herein involving Firestone.

6. Further affiant sayeth not.

/s/ RONALD D. ROTUNDA
Ronald D. Rotunda

SUBSCRIBED AND SWORN to before me this 21st day of May, 1979.

/s/ Kathryn H. Gardner,
Notary Public,
My Commission expires: Oct 4, 1980.

Affidavit.

(Title Omitted in Printing)

State of Illinois, County of Cook.

AFFIDAVIT OF JOHN B. CAROTHERS III IN SUPPORT OF FIRESTONE'S MOTION TO DISQUALIFY JOHN C. RISJORD.

John B. Carothers III, being duly sworn, states as follows:

1. He is an associate in the law firm of Ross, Hardies, O'Keefe, Babcock & Parsons, One IBM Plaza, Chicago, Illinois 60611, telephone number 312-467-9300.

2. Among his duties is assisting in the coordination of litigation involving wheels and rims manufactured by Firestone Steel Products Company, a division of The Firestone Tire & Rubber Company (hereinafter "Firestone").

3. Among said duties has been compliance with Firestone's duties and obligations under various product liability excess insurance policies. This has included dealings with The Home Insurance Company (hereinafter "Home") which furnished excess liability insurance coverage to The Firestone Tire & Rubber Company for a number of years and up until the end of calendar year 1976. This coverage was on an "occurrence" basis, meaning that Home covered all accidents occurring through calendar year 1976, regardless of when the claim was made or the lawsuit was filed.

4. The attached documents designated Exhibits A-H are true and correct copies of letters received by Firestone and Johnson and Higgins, Firestone's insurance broker, from Home. To his knowledge, the only rim cases for which Firestone has received such letters are Risjord cases.

5. The attached Exhibits H and I are true and correct copies of pleadings in *Gipson v. Firestone* and *The Home Insurance Company v. Firestone*.

6. He personally has arranged for the organization and presentation of Firestone wheel and rim product liability files for examination by Home representatives. He is further advised that Firestone trial counsel throughout the country are in communication with representatives of Home for purposes of discussing strategy and developments in cases involving Home.

7. Further, he has personally discussed the strategy and developments in rim and wheel cases with representatives of Home.

8. At or about the time of the Show Cause Order of the Judicial Panel on Multidistrict Litigation, and at or about the time Firestone began attempting to reconcile Home's conduct in serving reservation-of-rights letters in Mr. Risjord's rim cases, Firestone learned that Mr. Risjord was an attorney for Home and listed Home prominently as one of his insurance clients. This was in October, 1978.

9. Further affiant sayeth not.

/s/ John B. Carothers III
John B. Carothers III

SUBSCRIBED and SWORN to on
this 22nd day of May, 1979.

/s/ Betty L. Carlson
Notary Public

Exhibit A.

THE HOME INSURANCE COMPANY

Manchester, New Hampshire

Executive offices: 59 Maiden Lane, New York, N.Y. 10038

October 12, 1978

Johnson & Higgins, Inc.
95 Wall Street
New York, New York 10005

Attention John B. Ahrens

Dear Mr. Ahrens:

Claim 601E566990
Insured: Firestone Tire & Rubber Company
Date of Accident: 5-22-73
Plaintiff: Goodwin

We have reviewed the captioned Complaint wherein the plaintiff alleges that Firestone Tire & Rubber Company negligently, willfully or intentionally failed to recall, develop and redesign its steel rims. Please note that any damages awarded to the plaintiff in connection with willful or intentional acts committed by Firestone Tire & Rubber Company, would not be covered under our Excess policy.

We refer you to the policy definition of occurrence, which states:

> "The term "occurrence" wherever used herein shall mean an accident or happening or event or continuous or repeated exposure to conditions which unexpectedly and unintentionally results in personal injury, property damage or advertising liability during the policy period. All such exposure to substantially the same general conditions existing at or emanating from one premises location shall be deemed one occurrence."

In light of the foregoing, The Home Insurance Company must reserve all of its rights in connection with the compensatory damages sought by the plaintiff in this case.

The Complaint also seeks relief for punitive damages alleging Firestone Tire & Rubber Company knew that the design of the steel rims posed a grave danger to the lives or property of consumers.

We must again refer you to the policy definition of "occurence" stated above, and we must advise you that The Home Insurance Company will not satisfy any judgment rendered against Firestone Tire & Rubber Company for punitive damages.

Please convey our position to the insured and provide me with a copy of your covering letter.

Very truly yours,

/s/ Leonard Brown
Leonard Brown
Assistant Manager
Excess Claims

LB:mw

Exhibit B.

THE HOME INSURANCE COMPANY

Manchester, New Hampshire

Executive offices: 59 Maiden Lane, New York, N.Y. 10038

October 12, 1978

Johnson & Higgins, Inc.
95 Wall Street
New York, New York 10005

Attention John B. Ahrens

Dear Mr. Ahrens:

File 311E738460
Insured: Firestone Tire & Rubber Company
Date of Accident: May 1, 1975
Plaintiff: Joseph Willie Butler

We have reviewed the captioned Complaint wherein the plaintiff alleges that Firestone Tire & Rubber Company negligently, willfully or intentionally failed to recall, develop and redesign its steel rims. Please note that any damages awarded to the plaintiff in connection with willful or intentional acts committed by Firestone Tire & Rubber Company, would not be covered under our Excess policy.

We refer you to the policy definition of occurrence, which states:

> "The term "occurrence" wherever used herein shall mean an accident or happening or event or continuous or repeated exposure to conditions which unexpectedly and unintentionally results in personal injury, property damage or advertising liability during the policy period. All such exposure to substantially the same general conditions excess at or emanating from one premises location shall be deemed on occurrence."

In light of the foregoing, The Home Insurance Company must reserve all of its rights in connection with the compensatory damages sought by the plaintiff in this case.

The Complaint also seeks relief for punitive damages alleging Firestone Tire & Rubber Company knew that the design of the steel rims posed a grave danger to the lives or property of consumers.

We must again refer you to the policy definition of "occurrence" stated above, and we must advise you that The Home Insurance Company will not satisfy any judgment rendered against Firestone Tire & Rubber Company for punitive damages.

Please convey our position to the insured and provide me with a copy of your covering letter.

Very truly yours,

/s/ Leonard Brown

Leonard Brown

Assistant Manager

Excess Claims

LB:mw

Exhibit C.

April 17, 1979

Johnson & Higgins, Inc.
95 Wall Street
New York, New York 10005

Attention Mr. J. Ahrens

Dear Mr. Ahrens:

Herbert Ruderman vs. Firestone
Tire and Rubber Company
Nassau County, New York

We acknowledge receipt of your first report on the above-captioned claim.

A review of the Summons and Complaint reveals that our insured is requesting recissional damages. We refer you to Exclusion B, which states that there would be no coverage provided for the recall or replacement of our insured's product.

There is also an allegation that the insured intentionally ignored public policy and demonstrated a disregard for human life.

There will be no coverage for this type of claim. We refer you to the policy definition of "Occurrence".

Therefore, we will not satisfy any judgment rendered against Firestone Tire and Rubber Company for these damages.

Please convey our position to the insured and provide me with a copy of your covering letter.

Very truly yours,

/s/ Francis Lynch
Francis Lynch
Supervisor
Excess Claims
Claim Department

FL:me

Exhibit D.

April 17, 1979

Johnson & Higgins, Inc.
95 Wall Street
New York, New York

Attention Jack Ahrens

Dear Mr. Ahrens:

Diane Perry vs. Firestone Tire
& Rubber Co.
Superior Court, California

We acknowledge receipt of the first report on the above captioned claim. A review of the Summons and Complaint reveals the plaintiff seeks damages for injunctive relief. In addition, it is alleged Firestone Tire & Rubber Company intentionally misrepresented its products. There is no coverage for injunctive relief under our policy of insurance.

Intentional acts are not covered by our policy of insurance. We refer you to the definition of occurrence.

Therefore, we will not satisfy any judgment rendered against you for these damages.

Please convey our position to the insured and provide me with a copy of the covering letter.

Very truly yours,

/s/ Francis Lynch
Francis Lynch
Supervisor
Excess Claims

FL:mw

Exhibit E.

April 17, 1979

Johnson & Higgins, Inc.
95 Wall Street
New York, New York 10005

Attention: J. Ahrens

Dear Mr. Ahrens:

William Kealthy vs
Firestone Tire & Rubber Company
Santa Clara, California

We acknowledge receipt of the first report in the above captioned claim. A review of the Complaint reveals the plaintiff seeks relief for damages due to the intentional misrepresentation of Firestone Tire & Rubber Company. The plaintiff also seeks relief for punitive damages.

There would be no coverage for intentional acts. We refer you to the policy definition of Occurrence.

Section 533 of the California Insurance Law states, "An insurer is not liable for losses caused by willful acts of an insured." California Law provides the punitive damages may only be recovered when the defendant has been guilty of an oppression, fraud or malice, expressed or implied. (Civil Court, Section 3294).

This section has been interpreted by California Law as follows:

"The act complained of must not only be willful in the sense of intentional, but must be accompanied by some aggravating circumstances amounting to malice and there must be an intent to vex, annoy or injure. Even gross negligence is not sufficient to satisfy such an award." (Gambo vs Ashe 153 California APP. 2nd 517).

As defined, it is clear that a willful act conceived through malice is required to recover punitive damages. As previously stated above, such willful acts preclude insurance coverage by reasons of California Insurance Code 533. Therefore we will not satisfy any judgment rendered against our insured for these damages.

Please convey our position to the insured and provide me with a copy of your covering letter.

Very truly yours,

/s/ Francis Lynch,
Francis Lynch
Supervisor—Excess Claims
Claim Department

FL:gr

Exhibit F.

April 17, 1979

Johnson & Higgins
95 Wall Street
New York, New York

Attention Mr. J. Ahrens

Dear Mr. Ahrens:

Alan Echmann and Others
vs. Firestone Tire and Rubber Company
of California

We acknowledge receipt of the first notice of loss on the above-captioned claim. A review of the Complaint reveals the plaintiff seeks damages for personal injury and property damage claims. No specific amounts or dates of loss are listed therefore, we cannot at this time, determine if the claims would fall within our policy period.

In addition, reimbursement for the cost of defective tires are sought. Please refer to Exclusion B of your policy of insurance. There is no coverage for this type of claim.

There is also a cause of action for punitive damages.

Section 533 of the California Insurance Law states, "An insurer is not liable for losses caused by willful acts of an insured." California law provides that punitive damages may only be recovered when a defendant has been guilty of an oppression, fraud or malice, expressed or implied. (Civil Court Section 3294).

This Section has been interpreted by California law as follows:

> "The act complained of must not only be willful in the sense of intentional but must be accompanied by some aggravating circumstances amounting to malice, and there must be an intent to vex, annoy or injure. Even

gross negligence is not sufficient to satisfy such an award.''

(Gambo vs. Ashe 15A California App. 2d. 517).

As defined it is clear that a willful act conceived through malice is required to recover punitive damages. As previously stated above, such wilful acts preclude insurance coverage by reason of the California Insurance Code 533. Therefore, we will not satisfy any judgment rendered against our insured for these damages.

Please convey our position to the insured and provide me with a copy of your covering letter.

Very truly yours,

/s/ Francis Lynch
Francis Lynch
Supervisor
Excess Claims
Claim Department

FL:me

Exhibit G.

April 17, 1979

Johnson & Higgins, Inc.
95 Wall Street
New York, New York

Attention Mr. J. Ahrens

Dear Mr. Ahrens:

Joan Levine Gall vs Firestone Tire
& Rubber Company
Hamilton County, Ohio

We acknowledge receipt of the first notice of claim on the above captioned case. A review of the summons and complaint reveals the plaintiff seeks injunctive relief and intentionally concealed defects in their products. Injunctive relief would not be covered by our policy since it does not fall within the policy definitions of property damage or personal injury.

In addition, there would be no coverage for intentional acts. We refer you to the policy definition of "Occurrence".

Therefore, we will not satisfy any judgment rendered against the insured for these damages. Please convey our position to the insured and provide me with a copy of your covering letter.

Very truly yours,

/s/ Francis Lynch
Francis Lynch
Supervisor
Excess Claims

FL:sg

Exhibit H.

Frank S. Gipson, vs. Calhoun-Smith Distributing Co., Inc., *et al.* NO. 277,698.

In the District Court of Travis County, Texas, 250th Judicial District.

PETITION IN INTERVENTION.

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES The Home Insurance Company, a corporation duly authorized to do business under the laws of the State of Texas, and as an additional Plaintiff, files this its Petition In Intervention.

I.

Prior to the filing of the Original Petition herein and prior to the occurrence of the events giving rise to this cause of action as set forth in Plaintiff's Original Petition, The Home Insurance Company had issued a policy of workers' compensation insurance to Brenlan Utilities and Excavation Company, the employer of Frank S. Gipson. Such policy of insurance was in full force and effect on the date of the accident alleged in Plaintiff's Original Petition, and as a consequence of the injuries suffered by Frank S. Gipson, Plaintiff In Intervention has at this time paid an amount in excess of the minimum jurisdictional limits of this Court in weekly compensation benefits and medical and related expenses.

By virtue of such payments, The Home Insurance Company is subrogated to the rights of Frank S. Gipson as against the Defendants, Calhoun-Smith Distributing Co., Inc. and Firestone Tire and Rubber Company, and the purpose of this plea of intervention is to assert and secure enforcement of such rights.

II.

Plaintiff In Intervention adopts, all and singular, the allegations contained in Plaintiff's Original Petition the same as though they were set forth herein in their entirety.

III.

Plaintiff In Intervention says further that although it is entitled to recover under subrogation the amount it has expended for workers' compensation benefits and medical and related expenses, the fact that it has made such payments and is entitled to the recovery thereof in this cause of action, is not material to the issues involved in this case; and that to read this plea of intervention to the jury, or to otherwise inform the jury of the existence of such subrogation right, would prejudice and inflame the minds of the jury against the Plaintiff and would be contrary to the laws governing such actions.

Therefore, Plaintiff In Intervention addresses this plea of intervention to the Court only and moves the Court to instruct the Defendants not to directly or indirectly inform the jury at the trial of this case of the payments made by Plaintiff In Intervention, or the fact that such subrogation right is asserted herein.

WHEREFORE, Plaintiff In Intervention prays that the Defendants herein be served with a copy of this plea of intervention, that the fact of such intervention be concealed from the jury, that Plaintiff In Intervention reserve the right to amend these pleadings to conform to future expenses that will be incurred by them, and that they have judgment for

their damages, and such other and further relief as it may show itself entitled to recover.

Morris & Ausley,
/s/ By Charles Morris,
Charles Morris
Attorneys for Plaintiff in Intervention.

Frank S. Gipson, vs. Calhoun-Smith Distributing Co., Inc., et al. No. 277,698.

In the 250th Judicial District Court of Travis County, Texas.

FIRST AMENDED PETITION IN INTERVENTION.

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES The Home Insurance Company, a corporation duly authorized to do business under the laws of the State of Texas, and as an additional Plaintiff, files this its Petition In Intervention.

I.

Prior to the filing of the Original Petition herein and prior to the occurrence of the events giving rise to this cause of action as set forth in Plaintiff's First Amended Original Petition, The Home Insurance Company had issued a policy of workers' compensation insurance to Brenlan Utilities and Excavation Company, the employer of Frank S. Gipson. Such policy of insurance was in full force and effect on the date of the accident alleged in Plaintiff's First Amended Original Petition, and as a consequence of the injuries suffered by Frank S. Gipson, Plaintiff In Intervention has at this time paid an amount in excess of the minimum jurisdictional limits of this Court in weekly compensation benefits and medical and related expenses.

By virtue of such payments, The Home Insurance Company is subrogated to the rights of Frank S. Gipson as against the Defendants, Calhoun-Smith Distributing Co., Inc., Firestone Tire and Rubber Company, and Kelsey-Hayes Co., and the purpose of this plea of intervention is to assert and secure enforcement of such rights.

II.

Plaintiff In Intervention adopts, all and singular, the allegations contained in Plaintiff's First Amended Original Petition the same as though they were set forth herein in their entirety.

III.

Plaintiff In Intervention says further that although it is entitled to recover under subrogation the amount it has expended for workers' compensation benefits and medical and related expenses, the fact that it has made such payments and is entitled to the recovery thereof in this cause of action, is not material to the issues involved in this case; and that to read this plea of intervention to the jury, or to otherwise inform the jury of the existence of such subrogation right, would prejudice and inflame the minds of the jury against the Plaintiff and would be contrary to the laws governing such actions.

Therefore, Plaintiff In Intervention addresses this plea of intervention to the Court only and moves the Court to instruct the Defendants not to directly or indirectly inform the jury at the trial of this case of the payments made by Plaintiff In Intervention, or the fact that such subrogation right is asserted herein.

WHEREFORE, Plaintiff In Intervention prays that the Defendants herein be served with a copy of this plea of intervention, that the fact of such intervention be concealed from the jury, that Plaintiff In Intervention reserve the right to amend these pleadings to conform to future expenses that will be incurred by them, and that they have judgment for

their damages, and such other and further relief as it may show itself entitled to recover.

Morris & Craven,
By /s/ Charles Morris,
Charles Morris
Attorneys for Plaintiff
in Intervention.

(Certificate of service omitted in printing).

Frank S. Gipson, vs. Calhoun-Smith Distributing Co., Inc.; The Firestone Tire & Rubber Company. No. 277,698.

In the 250th Judicial District Court of Travis County, Texas.

COUNTERCLAIM.

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes the defendant, the Firestone Tire & Rubber Company, and makes and files this its counterclaim against the intervening plaintiff, the Home Insurance Company, and as grounds therefor would respectfully show unto the Court the following:

I.

The Firestone Tire & Rubber Company (hereinafter "Firestone") is an Ohio corporation qualified to do and doing business in the State of Texas. The Home Insurance Company (hereinafter "Home"), plaintiff in intervention herein, is and was at all material times a corporation engaged in the business of insurance and reinsurance and duly authorized to do and doing business in the State of Texas. Service upon Home may be had by serving the Texas Commissioner of Insurance.

II.

At all material times Firestone was and is in the business of manufacturing, distributing and selling various products, including metal motor vehicle rims and wheels. Beginning on or about March 1, 1973, the Home issued policies of product liability insurance to Firestone. Under said policies, the Home insured Firestone in excess of a designated retention amount against liability for personal injuries or property damage arising from Firestone's products. Under the provisions of those policies, the Home demanded and received, and continues to receive, confidential information,

records, and documents from Firestone. The Home has and maintains files containing such information, which information includes the legal contentions and defenses of Firestone to the various product liability cases and claims brought against it. Said confidential information is directly applicable and relevant to, among other things, the product made the basis of this suit.

III.

By virtue of the contractual undertaking of the Home to insure Firestone, the Home stands in a fiduciary relationship to Firestone. Because of the aforesaid policies, and because of an implied covenant of good faith and fair dealing arising out of the said policies, the Home is obligated to avoid any conflict of interest or potential conflict of interest with Firestone and to refrain from using information and documents acquired from Firestone to Firestone's detriment.

IV.

Despite this fiduciary duty owed by Home to Firestone, the Home has filed the present intervention claim against Firestone. In asserting this claim, the Home is acting in violation of its fiduciary duty and implied covenant of good faith and fair dealing.

V.

In addition, Firestone is informed and believes, and based upon such information and belief, alleges that the Home has engaged in and is engaging in other acts and conduct adverse to the interest of Firestone, all in violation of its aforesaid fiduciary duty. For example, the Home has demanded information, records, and documents from Firestone which contain the legal contentions and defenses of Firestone, while simultaneously insuring persons with positions ad-

verse to Firestone in products liability cases involving the same manufactured products. The Home has also become active in the affairs of trade associations, trade organizations and trade institutes which had and have interests adverse to Firestone, all without disclosing such adverse and conflicting interests to Firestone.

VI.

By reason of the foregoing breaches of fiduciary duty by the Home, Firestone has sustained damages far in excess of the minimum jurisdictional limits of this Court, for which it seeks compensation. In addition, unless the Home, its officers, agents, representatives, servants and employees are enjoined and restrained from further violations, Firestone will suffer and sustain irreparable losses and injury in the future, for all of which there is no adequate remedy at law.

VII.

The controversies which have arisen between the Home and Firestone are actual, present, and justiciable, thereby entitling Firestone to declaratory relief.

WHEREFORE, PREMISES CONSIDERED, Firestone respectfully prays that the Home Insurance Company be cited to appear and answer this counterclaim, that upon hearing hereof the Court enter its award and judgment denying all relief to the Home for the intervention claim it asserts herein, that Firestone be awarded a money judgment for its damages as they may appear at the trial hereof, that a judgment be entered determining and declaring the rights and liabilities of the parties to the aforesaid insurance policies in accordance with the allegations herein, that the Home be permanently enjoined and restrained from further breaches and violations of its fiduciary duty to Firestone,

for costs of Court, and for such other and further relief, in law or in equity, to which Firestone may show itself to be justly entitled.

Respectfully submitted,

Brown, Maroney, Rose,
Baker & Barber,
/s/ By Wayne Prescott,
Attorneys for Defendant and Counter-claimant, The Firestone Tire & Rubber Company.

(Certificate of service omitted in printing).

Exhibit I.

SUPERIOR COURT OF CALIFORNIA—CITY AND COUNTY OF SAN FRANCISCO.

THE HOME INSURANCE COMPANY, a corporation, Plaintiff vs. THE FIRESTONE TIRE & RUBBER COMPANY, a corporation, DOES I through X, inclusive, Defendants. No. 733845,

Filed: Feb 6 1978.

Plaintiff alleges:

COMPLAINT FOR DAMAGES FOR BREACH OF CONTRACT AND NEGLIGENCE

FIRST CAUSE OF ACTION.

1. The true names and capacities of defendants sued herein as DOES I through X, inclusive, are unknown to plaintiff who, therefore, sues such defendants by such fictitious names. Plaintiff is informed and believes and thereon alleges that each defendant is negligently responsible in some manner for the events herein referred to and alleges that each defendant is also responsible for bad faith and for breach of contract for the events herein referred to, which caused injury and damages proximately thereby to plaintiff.

2. Plaintiff, THE HOME INSURANCE COMPANY (hereinafter "HOME"), is a corporation duly authorized to do and doing business in the State of California.

3. Defendants THE FIRESTONE TIRE & RUBBER COMPANY (hereinafter "FIRESTONE") and DOES I through V, inclusive (hereinafter collectively "the present defendants"), and each of them, are corporations or other business entities duly authorized to do and doing business in the State of California.

4. HOME is informed and believes and thereon alleges that the present defendants, and each of them, are, and were

at all times herein mentioned, the agent or principal of each of the other present defendants, and each of them, and were, at all time herein mentioned, acting within the course and scope of their said agency.

5. On or about March 3, 1973, HOME issued to the present defendants, and each of them, a certain policy of comprehensive liability and indemnity insurance, Policy No. HEC 4429222 (hereinafter "the policy"), with a policy period commencing March 1, 1973. The policy provided for the payment by HOME to the present defendants, and each of them, for an ultimate net loss in excess of a Five Hundred Thousand Dollar ($500,000.00) retention by the present defendants, and each of them, up to a maximum of Ten Million Dollars ($10,000,000.00).

6. The policy further provided, in part:

ASSISTANCE AND COOPERATION

The Company shall not be called upon to assume charge of the settlement or defense of any claim made or suit brought or proceeding instituted against the insured but The Company shall have the right and shall be given the opportunity to associate with the insured or the insured's underlying insurers, or both, in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears reasonably likely to involve The Company, in which event the insured and The Company shall co-operate in all things in the defense of such claim, suit or proceeding.

. . .

LOSS PAYABLE:

Liability under this policy with respect to any occurrence shall not attach unless and until the insured, or the insured's underlying insurer, shall have paid the amount of the underlying limits on account of such occurrence. The insured shall make a definite claim

for any loss for which The Company may be liable under the policy within twelve (12) months after the insured shall have paid an amount of ultimate net loss in excess of the amount borne by the insured or after the insured's liability shall have been fixed and rendered certain either by final judgment against the insured after actual trial or by written agreement of the insured, the claimant, and The Company. If any subsequent payments shall be made by the insured on account of the same occurence, additional claims shall be made similarly from time to time. Such losses shall be due and payable within thirty (30) days after they are respectively claimed and proven in conformity with this policy.

7. The policy contained a mutual, implied covenant of good faith and fair dealing on the part of both HOME and the present defendants, and each of them, and, in particular, contained an implied covenant that the present defendants, and each of them, by retaining the power to control litigation through selection of counsel, to determine discovery, determination of whether to institute settlement negotiations, to determine whether to accept or reject settlement offers and to determine ultimately whether to settle or try individual suits, impliedly agreed to perform those obligations in good faith and in due consideration for both their own interests and the interests of HOME.

8. The present defendants, and each of them, impliedly contracted and covenanted to perform each of the foregoing obligations including, in particular, the duties to initiate settlement negotiations, to determine whether to accept or reject settlement offers, and to determine whether to settle or try individual suits, in the particular county where the particular suit was filed.

9. On or about July 16, 1973, while the policy was in effect, an automobile equipped with tires manufactured by FIRESTONE and DOES VI through X, inclusive, and each of them, and operated by ANNA AKINCI was involved in an accident on California Interstate No. 5 near Los Banos that resulted in serious and permanent personal injuries to the occupants.

10. Thereafter, three lawsuits were filed in the Superior Court of the State of California in and for the City and County of San Francisco against FIRESTONE and DOES VI through X, inclusive, claiming damages for the injuries and wrongful death occurring in said accident.

11. Pursuant to the terms of the policy the present defendants, and each of them, assumed defense of the lawsuits.

12. The lawsuits were eventually consolidated under the title of "ANNA AKINCI, et al., Plaintiffs, vs. THE FIRESTONE TIRE & RUBBER COMPANY, et al., Defendants", No. 677117, in the City and County of San Francisco, State of California (hereinafter "the consolidated actions"), and the consolidated actions were tried beginning July 18, 1977.

13. In the investigation and preparation for defense of the consolidated actions, the present defendants, and each of them were aware independently, and as advised by attorneys retained by them, that the injuries received by the plaintiffs in the consolidated actions were serious, horrible, permanent, and were in effect of a catastrophic nature; defendants were further aware and were advised that the liability of the present defendants, and each of them, was probable and that there was a great danger of a recovery by plaintiffs far in excess of the Five Hundred Thousand Dollars ($500,000.00) retention and, further, that a judgment in favor of the consolidated plaintiffs would greatly exceed

both said retention limits of Five Hundred Thousand Dollars ($500,000.00) and the demand of One Million Six Hundred Twenty-Five Thousand Dollars ($1,625,000.00).

14. The present defendants, and each of them, failed to initiate settlement negotiations in the consolidated actions as required by their implied contractual obligations with HOME, and the present defendants, and each of them, failed to evaluate and respond in good faith, as required by their implied contractual obligations with HOME, to settlement demands made in San Francisco County and possibly elsewhere by the plaintiffs in the consolidated actions.

15. As a proximate result of the above-described failures on the part of the present defendants, and each of them, the consolidated actions were not settled prior to trial although they could and should have been settled prior to trial for One Million Six Hundred and Twenty-Five Thousand Dollars ($1,625,000.00) and instead proceeded to trial and a resultant judgment of Three Million Eighteen Thousand Dollars ($3,018,000.00) which judgment was ultimately satisfied for Two Million Eight Hundred and Twenty-Five Thousand Dollars ($2,825,000.00), and of which proximately damaged HOME, in that HOME was required to pay a much greater sum to satisfy the judgment than HOME would have been required to pay had the present defendants, and each of them, conducted good faith settlement negotiations and entered into a good faith pre-trial settlement with plaintiffs in the consolidated actions. The exact amount of HOME's damage is unknown, but is it known that the total is in excess of One Million Dollars ($1,000,000.00) and HOME will pray leave to insert the exact amount when the same is ascertained.

WHEREFORE, HOME prays judgment as hereinafter set forth.

SECOND CAUSE OF ACTION.

16. HOME here incorporates as though set forth in full Paragraphs 1 through 13, inclusive, of the First Cause of Action.

17. Shortly before commencement of the trial of the consolidated actions, in the County of San Francisco, the Attorneys for the plaintiffs in the consolidated actions submitted a settlement demand to the present defendants, and each of them, for the settlement of all claims in the consolidated action for the total sum of One Million Six Hundred Twenty-Five Thousand Dollars ($1,625,000.00), indicating that the consolidated actions could be settled for that figure or for a lesser figure.

18. Approximately three (3) days prior to the commencement of the trial of the consolidated actions, HOME, suspecting that the present defendants, and each of them, were not fulfilling their implied good faith obligations under the policy, made demand upon the present defendants, and each of them, to release the Five Hundred Thousand Dollar ($500,000.00) retention, so that negotiations towards a settlement could commence.

19. The present defendants, and each of them, failed and refused to release the Five Hundred Thousand Dollar ($500,000.00) retention, thus breaching both the implied covenant of good faith and the express requirement in the policy that the present defendants, and each of them, cooperate with HOME whenever HOME exercise its right to associate in the control of any claim, suit or proceeding relative to an occurrence where the claim or suit involved or appeared reasonably likely to involve the sums in excess of the present defendants' retention.

20. Thereafter HOME made further written and oral demands to the present defendants, and each of them, to

release the amount of the retention so that settlement negotiations could proceed and so that the consolidated actions could be settled within the amount for which the plaintiffs in the consolidated actions had offered to settle.

21. The present defendants, and each of them, refused to release the retention, refused to negotiate in good faith for the settlement of the consolidated actions, and during the trial of the consolidated actions advised HOME that the present defendants, and each of them, would release the retention only upon conditions not contained in the policy, namely that HOME promise not to cancel the policy and that defendants would retain the right to make the ultimate decision as to the amount which could be paid in settlement of the consolidated actions.

22. Ultimately, the present defendants, and each of them, agreed to release the retention, but by the time they did so, the plaintiffs in the consolidated actions had withdrawn their One Million Six Hundred and Twenty-Five Thousand Dollar ($1,625,000.00 offer, and instead demanded more than Two Million Three Hundred Thousand Dollars ($2,300,000.00) to settle the consolidated action

23. Thereafter, one of the consolidated plaintiff's claims was settled for the total sum of Three Hundred Ten Thousand Dollars ($310,000.00); but while HOME was attempting to evaluate the settlement demands of the other consolidated plaintiffs, those plaintiffs withdrew all settlement demands, refused to negotiate with HOME and required that the trial proceed to verdict and judgment.

24. On or about August 19, 1977, a verdict was rendered by the jury in favor of all remaining plaintiffs in the consolidated actions and against defendant FIRESTONE and DOES VI through X, and each of them, in the sum of Three Million Eighteen Thousand Dollars ($3,018,000.00).

25. Prior to the determination of a motion for new trial in the consolidated actions, the non-settling plaintiffs in the consolidated actions agreed to and did accept settlements in full satisfaction of said judgments in the sum of Two Million Eight Hundred Twenty-Five Thousand Dollars ($2,825,000.00).

26. The present defendants, and each of them, by their unreasonable and arbitrary refusal to respond in good faith to the One Million Six Hundred and Twenty-Five Thousand Dollar ($1,625,000.00) offer of the plaintiffs in the consolidated action and their refusal to release their policy retention so that HOME could respond to that demand, breached their express and implied contractual obligation to HOME and were guilty of bad faith in their failure to conduct good faith settlement negotiations and in their defense of said action.

27. As a direct and proximate result of the failure of the present defendants, and each of them, to comply with the express and implied terms of the policy, including the duty to exercise good faith, care, skill and diligence for the protection of HOME's rights, as entrusted to defendants under the terms of the policy, HOME was ultimately forced to pay to settle the consolidated actions an amount that greatly exceeded the amount that HOME would have been required to contribute had the present defendants and each of them, conducted good faith settlement negotiations with plaintiffs in the consolidated actions or promptly released the retention so that HOME could conduct such negotiations. The exact amount of HOME's damage is unknown, but it is known that the total is in excess of One Million Dollars ($1,000,000.00), and HOME will pray leave to insert the exact amount when the same is ascertained.

WHEREFORE, HOME prays judgment as hereinafter set forth.

THIRD CAUSE OF ACTION.

28. HOME here incorporates by reference as though set forth in full the First Cause of Action in its entirety.

29. The present defendants, and each of them, were negligent in their conduct of the defense and control of the consolidated actions, and HOME was proximately damaged thereby.

WHEREFORE, HOME prays judgment as hereinafter set forth.

FOURTH CAUSE OF ACTION.

30. HOME here incorporates by reference as though set forth in full Paragraphs 1 through 13, inclusive, of the First Cause and the Second Cause of Action in its entirety.

31. The present defendants, and each of them, were negligent in their failure to respond in good faith to the One Million Six Hundred and Twenty-Five Thousand Dollar ($1,625,000.00) offer by the plaintiffs in the consolidated actions, and in their failure to promptly release their retention when requested to do so by HOME, and their failure to cooperate with HOME when HOME exercised its right to associate in the defense and control of the consolidated actions, and HOME was proximately damaged as a result of this negligence.

WHEREFORE, HOME prays judgment against defendants as follows

1. For special damages, according to proof, together with interest theron;

2. For attorneys' fees incurred herein;

3. For costs of suit; and

4. For such other and further relief as the Court deems just and proper in the premises.

NICHOLS, WILLIAMS, MORGAN
& DIGARDI,
By (NOT SIGNED),
Attorneys for plaintiff.

Brief and Suggestions.

(Title omitted in Printing)

In the United States District Court for the Western District of Missouri, Western Division.

BRIEF AND SUGGESTIONS IN OPPOSITION TO THE MOTION OF FIRESTONE TIRE & RUBBER COMPANY TO DISQUALIFY JOHN C. RISJORD.

I.

THERE IS NO SUBSTANTIAL RELATION BETWEEN ATTORNEY RISJORD'S REPRESENTATION OF THE HOME INSURANCE COMPANY AND THE PRESENT LITIGATION.

The deposition of attorney Risjord establishes that the only matter in which he represented the Home Insurance Company in the past ten years was Cannova Enterprises, Inc., et al. vs. Great Americal Insurance Company of America, et al., No. 782397, in the Circuit Court of Jackson County, Missouri. This case arose from a fire at Mr. C's Restaurant on December 24, 1973, and is a claim for property loss on policies of fire insurance with the asserted defense that the fire was incendiary. Home Insurance Company is one of six companies involved in the suit. This suit is so obviously unrelated to the instant litigation that Firestone counsel declined to examine attorney Risjord during his deposition concerning the nature of the suit or the existence of any confidential communication between him and the Home Insurance Company. This essential element that counsel received some confidence substantially related to the instant litigation is totally lacking and demonstrates once again the extremes to which Firestone is prepared to go to delay and obstruct these proceedings.

* * *

Affidavit

(Title Omitted in Printing)

In the United States District Court for the Western District of Missouri, Western Division.

Filed: July 3, 1979

***

AFFIDAVIT OF COLIN SMITH.

COLIN SMITH, being duly sworn, states as follows:

1. He is a law student at Washington University, St. Louis, Missouri. He is currently a law clerk at the firm of Ross, Hardies, O'Keefe, Babcock & Parsons, Chicago, Illinois.

2. On June 25, 1979, he was instructed to conduct a search of the files of the Corporate Insurance Department of The Firestone Tire & Rubber Company in Akron, Ohio, in order to determine whether, prior to the deposition of John C. Risjord on May 18, 1979, Firestone had ever received a letter from a Home Insurance Company official or anyone else on Home Indemnity Company stationary. He could find no such letter.

3. The only letter he could find on Home Indemnity Company stationary was a letter to Firestone's Law Department dated May 30, 1979, twelve days after the Risjord deposition. It is attached minus the text. Also attached minus the text is another letter to Firestone's Law Department dated February 1, 1979, signed by the same person (Francis Lynch) on Home Insurance Company stationary. This latter

(February 1) stationary is identical to all other stationary received by Firestone prior to the Risjord deposition.

Further, affiant sayeth not.

/s/ Colin Smith

Subscribed and Sworn to
before me this 29th day
of June, 1979
/s/ Mary J. Schneider
Notary Public

THE HOME INDEMNITY COMPANY
Manchester, New Hampshire

Executive offices: 59 Maiden Lane, New York, N.Y. 10038

May 30, 1979

Firestone Tire & Rubber Co.
1200 Firestone Parkway
Akron, Ohio 44317

Att: Joseph E. Downs
Asst. Counsel

Very truly yours,

/s/ Francis Lynch
Francis Lynch, Supv.
New York Excess Claims

FL/ab
cc: Mr. Kleinhenz
Mr. Hilton

THE HOME INSURANCE COMPANY
Manchester, New Hampshire

Executive offices: 59 Maiden Lane, New York, N.Y. 10038

February 1, 1979

Firestone Tire & Rubber Company
1200 Firestone Parkway
Akron Ohio 44317

Attention Joseph E. Downs,
Legal Department

Very truly yours,

/s/ Francis Lynch
Francis Lynch
Supervisor
Excess Claims

FL:aw

Transcript.

(Title Omitted in Printing)

In the United States District Court for the Western District of Missouri, Western Division.

[Page 1 through Page 3, line 13]

TRANSCRIPT OF PROCEEDINGS.

On Friday, the 10th day of August, 1979, the above-entitled cause came on for pre-trial conference before the Honorable WILLIAM R. COLLINSON, Judge, at Kansas City, Missouri.

Whereupon, the following proceedings were had and entered of record:

THE COURT: We will need the appearances of counsel here. If counsel will stand up and give their names and their client to the reporter at this time. We will start with the plaintiffs.

MR. RISJORD: John Risjord and Danny Curtis, lead and liaison counsel for the plaintiffs, steering committee and counsel for the plaintiffs in Goodwin, Butler, Hale, Rodriquez and Walker against Firestone.

MR. STITES: Ronald J. Stites, Robert Walker is my client, a member of the plaintiffs' steering committee.

MR. SCHULMAN: Howard J. Schulman; with me today is Thomas Minkin, M-i-n-k-i-n (spelling), on behalf of the plaintiff Lantieri. I'm also a member of the steering committee for the plaintiffs.

MR. OWSLEY: Michael A. Owsley, O-w-s-l-e-y (spelling), on behlaf of Henderson.

MR. RODEN: Robert Roden on behalf of Gail McGee versus Goodyear Tire & Rubber Company and Thomas Clayton, also a member of the steering committee.

MR. MIMS: Johnny W. Mims, attorney for Joe B. Brown and also a member of the plaintiff's steering committee.

MR. EASLEY: Cliff Easley, Bruce, Mississippi, attorney for Butler, Goodwin case and also a member of the steering committee.

THE COURT: Any other plaintiffs' counsel present? Defendants' counsel.

MR. SHAPIRO: Alvin Shapiro, Paul Donnelly, Lawrence Brown and Neal Gerstandt of the Stinson, Mag firm for Goodyear plus Jim Benjamin, David Oliver and John Cozad of the Field, Gentry firm also here.

MR. FREIVOGEL: William Freivogel for the Firestone Tire & Rubber Company and John Carothers for the Firestone Tire & Rubber Company, and Fran Prell. And liaison counsel, William Sanders and James Warden.

* * *

[Page 68, line 5 through page 77, line 24].

THE COURT: I am not requiring any non-manufacturing defendants to file any such suggestions but if they want to, they can. Let's leave it that way.

Now, gentlemen, I have the motion to disqualify Mr. Risjord. There have been a number of papers filed in connection with it.

What I want to do right now is to get a stipulation of uncontroverted facts—some of the facts that I have learned have simply been in the suggestions and haven't appeared in depositions or what I would call hard evidence. But I think they are uncontroverted. But let's get the uncontroverted facts spread on the record at this time. And it will be much simpler for me to order the parties to meet and stipulate to uncontroverted facts, but I think it probably would take too long. I think we can do it here.

The first uncontroverted fact, as I understand, is that—maybe it isn't uncontroverted—that the Home Insurance Company is the liability carrier on Firestone, on the lawsuits against Firestone pending in this court—well, on a deductible policy but all liability over $50,000; is that correct, Mr. Freivogel?

MR. FREIVOGEL: Your Honor, it is correct. I think the deductible, as your Honor calls it, varied from year to year, and there are a couple of cases involving accidents which occurred outside the coverage of that policy. There are more recent cases of occurrences in 1977, which are not under the Home policy but the bulk of the cases are under the Home policy.

THE COURT: How many cases in which you individually represent the plaintiff, Mr. Risjord, have named Firestone as a defendant?

MR. RISJORD: Firestone is named as a defendant in all but one of my cases, that is, their names are Rodriquez, Butler, Goodwin and Hale.

THE COURT: In four cases, they are named defendant?

MR. RISJORD: That is correct.

THE COURT: I presume from your statement that Home does have the liability coverage in some or all of those cases?

MR. FREIVOGEL: With one or two exceptions.

THE COURT: Those four he just named.

MR. FREIVOGEL: Would you repeat that list?

MR. RISJORD: Rodriquez, Butler, Goodwin and Hale.

MR. FREIVOGEL: I believe three of them, your Honor. I believe three of them but it may be two.

Your Honor, I think the correct term is not a liability policy but an excess policy.

THE COURT: Excess liability policy. Now, at the present time, Mr. Risjord or his law firm is representing the Home Insurance Company in a—in a direct suit against Home on a fire insurance policy; is that correct?

MR. RISJORD: That's correct, your Honor. It's entitled Canova Enterprises, Incorporated, doing business as Mr. C's 103 Restaurant, which was located at 103rd and State Line Road, and it's against, I believe, six property insurers, the subject of the suit being a claim on policies of fire insurance one of which was issued by the Home Insurance Company being the fire insurance parent company, as I understand it, of the Home Group.

THE COURT: Now, can you give me the approximate dates of when the employment commenced in that case?

MR. RISJORD: Employment—the fire occurred Christmas Eve, 1973, and I was employed in January of 1974. The case is still pending.

THE COURT: Very well. Now, is it stipulated that in Martindale-Hubbell, your firm lists Home Insurance Company as one of its clients and I guess, as Mr. Sanders pointed out about six times, it is a first listed client?

MR. RISJORD: Well, there is no significance to that. We certainly stipulate we have and do list the Home Insurance Company and I stress that that's the fire insurance company and not the liability insurer.

MR. FREIVOGLE: Your Honor, that's a misstatement. The Home Insurance Company issued this policy and it's the same Home Insurance Company and that also goes for the Home Indemnity Company which Mr. Risjord alluded to in his deposition. We have filed with your Honor letterheads from both Home Insurance and Home Indemnity and each letter was signed by the same claims manager.

MR. RISJORD: We list them at least in, I believe, the current Martindale-Hubbell, they are the first of a number of representative clients listed.

THE COURT: Now, let me ask this: Has your firm now or has it ever been on retainer basis with that company?

MR. RISJORD: No, sir.

THE COURT: Is that what I would call the ordinary employment of the liability insurance business, that you are under no obligation to accept employment and under no obligation, any legal obligation to employ you in cases filed in Kansas City?

MR. RISJORD: That's correct, your Honor, in addition to which they have not ever, to my knowledge, employed me in any liability or casualty type case.

THE COURT: And they have other counsel in Kansas City?

MR. RISJORD: They do.

THE COURT: In those cases?

MR. RISJORD: Yes, they do.

MR. FREIVOGEL: Your Honor—

MR. RISJORD: All of whom represent some other party in this litigation, I think.

MR. FREIVOGEL: Your Honor, it's also our position it is not just Mr. Risjord but it's his firm.

THE COURT: I understand.

MR. FREIVOGEL: I think at some point that ought to be established that it is the firm's cases.

THE COURT: The question I had, the firm has never received any—

MR. RISJORD: Retainer, no.

THE COURT: —any retainer?

MR. RISJORD: No, sir.

THE COURT: And as I say, it is what we practicing lawyers consider a client but they are under no obligation to employ you, your firm, in any litigation in Kansas City and you are under no obligation to accept employment if you choose not to.

MR. RISJORD: That's correct.

THE COURT: It's that arrangement, all right.

Now, to me those are the material facts which I feel affect this motion for disqualification. There are a number of other speculative matters alleged in the motion which I regard as immaterial in this matter.

Now, this court has a rule, Rule 43, which contains a provision that the—we adopt the Code of Professional Responsibility and Code of Judicial Conduct that is adopted by the Supreme Court of this state, and the Supreme Court of this state has published—has published a Code of Professional Responsibility and Code of Judicial Conduct which at least in regard—I haven't gone through all of it, but is identical on these provisions that we are interested in with the A.B.A. Code of Professional Responsibility, and I'm referring specifically to Canon 5, I believe it's 5, the disciplinary rule under Canon 5 provides that "Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or business interest. (B) A lawyer shall not accept employment in contemplated or pending litigation—" this is the witness, this is the witness provision.

Now, those rules have a provision that if the client—here, it's DR 5-105(B)—(C), 105(C). "In the situation as covered by DR 5-105(A)—" that's the first one I read—"and (B), a lawyer may represent multiple clients if it is

obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each."

There are increasing number of decisions on this question. I feel that—and then, of course, there are the other provisions on the appearance of impropriety.

I feel that under 5-105(A), that there is an appearance of impropriety in Mr. Risjord representing the Home Insurance Company as a defendant, a client of his, present representation and representing plaintiffs suing that company, not suing that company but suing in effect that company would be liable—could be liable for a great deal of money in those lawsuits. I feel there is a very, very clear statement here that he may do so if he makes a full disclosure to the clients and they agree. I feel that if that can not be done that he will have to withdraw as counsel in litigation one place or the other.

This is—there is no claim, as I understood it, I should have included this in my stipulation, that he has ever represented Home Insurance Company in any subject matter related to litigation; that's correct, is it?

MR. FREIVOGEL: We have no knowledge that that is true.

MR. RISJORD: And I will state to the court that it never has been true. I never have represented the Home Insurance or the Firestone Tire & Rubber Company as their insured by the Home.

MR. FREIVOGEL: Again I refer to the word "I". I think the whole firm is relevant.

MR. RISJORD: The whole firm has not, excuse me, please correct.

THE COURT: So I think that I'm going to enter—I'll enter a written order on this matter along the lines I have just stated as to my conclusion as to the law, after reading a number of cases, after reading the Code of Professional Responsibility, that there will be a conditional granting of this motion for disqualification with the provision that Mr. Risjord may avoid that disqualification by the alternative methods I suggested, either withdrawing from the case in which he represents Home, completely withdrawing from that case here in Kansas City, or by the written consent of his clients and the Home in these damage suits. I'm just talking about the lawsuits that he filed in this court or the lawsuits he filed that are before this court, and the written consent of Home Insurance Company representing.

Now, I expect it will take a little time to comply with that order, let's say twenty days' additional time. There are several cases that hold that the order of disqualifying a lawyer is an appealable order. I found no cases saying the order which I think I am in fact making refusing a disqualification or the conditional disqualification is an appealable order, but I will be glad to certify it if the defendant Firestone wants it certified as an interlocutory appeal.

MR. FREIVOGEL: Your Honor, it was our intention if your Honor was going to deny our motion to appeal immediately, although I'm in agreement with your reading the cases that it's probably appealable with right of a notice of appeal filed within thirty days of the order.

But in light of the conditional nature of it, it creates kind of an uncertain—

THE COURT: Well, it won't be a final order, I will put in the order this is not a final order until Mr. Risjord has notified the Court what he chooses to do. He could choose

to just do nothing and appeal the order himself, he might choose to do that.

Let's say three weeks from today, twenty-one days from today, Mr. Risjord respond to the Court that he's either done this or taken the steps to do what I've suggested or he feels the Court's order is wrong and he intends to appeal immediately, twenty-one days. That would be plenty of time?

MR. RISJORD: Yes, your Honor, it is.

THE COURT: And I would suggest that when you take your appeal, you also get an order of interlocutory appeal.

MR. FREIVOGEL: Thank you, that's very kind of you.

* * *

[Page 102]

REPORTER'S CERTIFICATE.

I, CAROL O'NEAL, Registered Professional Reporter, hereby certify that I am a duly appointed, qualified and acting Official Court Reporter for the United States District Court for the Western District of Missouri; that the foregoing pages numbered 1 to 101a, inclusive, contain a true and correct transcript of the proceedings had in the above-entitled cause on the date or dates stated therein, and that said transcript is a true transcription of my shorthand notes taken therein.

/s/ Carol O'Neal
Official Court Reporter

Second Pretrial Order.

In the United States District Court for the Western District of Missouri, Western Division.

In re: Multi-Piece Rim Products Liability Litigation. M.D.L. Docket No. 362.

Filed: Aug. 16, 1979.

SECOND PRETRIAL ORDER

On August 10, 1979, this Court held the second pretrial conference in this multidistrict proceeding. The several matters discussed during that conference will be discussed below.

I. Firestone's Motion to Disqualify Risjord

On May 24, 1979, defendant Firestone filed a motion to disqualify plaintiffs' lead counsel, John C. Risjord. Firestone advances two major arguments in support of its motion. First, Firestone argues that Mr. Risjord has a conflict of interests that bars his further participation in this case. At the pretrial conference that was held on August 10, 1979, the following facts were stipulated by Mr. Risjord and Firestone:

1) For the past several years, and until the present time, Mr. Risjord's law firm has included Home Insurance Company in its list of clients published in the Martindale-Hubbell Law Directory;

2) During the past several years Mr. Risjord's law firm has represented Home Insurance Company in litigation that was not related to this pending case;

3) Neither Mr. Risjord nor his law firm has ever represented Home Insurance Company in litigation that is related to this pending action;

4) Home Insurance Company does not pay a retainer fee to Mr. Risjord or to his law firm, but does

employ his law firm from time to time on a case-by-case basis;

5) Mr. Risjord's firm was employed in January, 1974, to represent Home Insurance Company in a suit on a fire insurance policy, which suit is presently pending in the Circuit Court of Jackson County, Missouri;

6) In at least two of the cases consolidated into this multidistrict proceeding, Mr. Risjord represents plaintiffs who have named Firestone as as defendant in their case;

7) Home Insurance Company is the liability insurance carrier who insures Firestone against excess liability in the two cases in which Mr. Risjord's clients have sued Firestone.

On November 3, 1978, this Court adopted Local Rule 43, which adopts the Code of Professional Responsibility of the Missouri Supreme Court. Disciplinary Rule 5-105 of that Code of Professional Responsibility provides:

DR 5-105 Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer

(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by his representation of another client, except to the extent permitted under DR5-105(c).

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the

interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under DR 5-105, no partner or associate of his or his firm may accept or continue such employment.

In *IBM v. Levin*, 579 F.2d 271 (3d Cir. 1978), the Third Circuit Court of Appeals interpreted an identical provision of the Code of Professional Responsibility of the District of New Jersey and applied that provision to a case that is indistinguishable from the facts of this case. That court stated:

> The rule [DR 5-105] does not define that nature or extent of the adverse effect contemplated on the attorney's exercise of independent judgment. However, DR 5-105(C) makes clear that situations entailing the likelihood of an adverse effect include circumstances in which such an effect may be minor permitting the performance of adequate services in spite of it. In those cases the multiple representation may take place if the attorney believes in good faith that he can adequately represent both clients and if the consent of the clients is obtained.
>
> We think, however, that it is likely that some "adverse effect" on an attorney's exercise of his independent judgment on behalf of a client may result from the attorney's adversary posture toward that client in another legal matter. *See Cinema 5, Ltd. v. Cinerama, Inc.*, 528 F.2d 1384, 1386-1387 (2d Cir. 1976); *Grievance Committee of the Bar of Hartford County v. Rottner*, 152 Conn. 59, 65, 203 A.2d 82, 84 (1964); Advisory Committee on Professional Ethics of the Supreme Court of New Jersey, *Opinion* No. 282, 97 N.J.L.J.

> 362 (1974), and *Opinion* No. 301, 98 N.J.L.J. 209 (1975). For example, a possible effect on the quality of the attorney's services on behalf of the client being sued may be a diminution in the vigor of his representation of the client in the other matter. *See Cinema 5, Ltd. v. Cinerama, Inc., supra* at 1387. A serious effect on the attorney-client relationship may follow if the client discovers from a source other than the attorney that he is being sued in a different matter by the attorney. The fact that a deleterious result cannot be identified subsequently as having actually occurred does not refute the existence of a likelihood of its occurrence, depending upon the facts and circumstances, at the time the decision was made to represent the client without having obtained his consent.

After consideration of the briefs submitted by Firestone and by Mr. Risjord, and after consideration of the facts to which they have stipulated, this Court, like the court in *IBM v. Levin, supra*, "think[s] . . . that it is likely that some 'adverse effect' on an attorney's exercise of his independent judgment on behalf of a client may result from the adversary posture toward that client in another legal matter." *IBM v. Levin, supra* at 280. Accordingly, Mr. Risjord will, hereinafter, be directed to either comply with the consent requirement of DR 5-105(C) or terminate his representation of either the plaintiffs in the cases in which Firestone is a defendant or his representation of Home Insurance Company.

The Court is, however, of the opinion that this ruling on the disqualification of Mr. Risjord because of a conflict of interests involves a controlling question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from this ruling may materially advance the ultimate termination of this litigation. This Court

will, therefore, pursuant to 28 U.S.C. §1292 (1976), certify this ruling for immediate appeal.

In addition, Firestone also argues that Mr. Risjord should be disqualified from further participation in this case because of an alleged violation of Local Rule 24. The allegations made in this argument raise questions of fact that will require an evidentiary hearing. A violation of Local Rule 24 would permit the imposition of some sanctions against Mr. Risjord, but the sanction of disqualification from further representation in this case would not be justified. Thus, since the relief requested by Firestone will not be granted even if the allegations of a violation of Local Rule 24 are true, a hearing on the questions of fact that are raised by Firestone's allegations will be deferred until a later date.

II. Expert Witnesses

During the pretrial conference that was held on August 10, 1979, questions were raised concerning discovery against expert witnesses. After consideration of the issues raised, this Court does, hereby, direct 1) that unless the parties have stipulated that a certain person may be deposed as an expert, any party desiring to commence discovery against an expert must move for permission to conduct the desired discovery and 2) that unless a prospective deponent has been identified as an expert prior to his deposition being taken, a subsequent deposition will be permitted if that deponent is later identified as an expert.

III. Document Depositories

Defendants Firestone and Goodyear shall each establish a document depository in Kansas City, Missouri, which depositories shall contain all documents that have heretofore or which may hereafter be produced by that defendant. The

depositories shall be accessible to counsel for any party to this action during regular business hours for inspection and/or copying of the documents contained in the depository.

IV. Extension of Local Discovery

The date for the close of local discovery in these consolidated actions is, hereby, extended to October 5, 1979.

V. Requests for Production

All Rule 34, Fed. R. Civ. P., requests for production of documents and things concerning the merits of the common issues in this case shall be filed and served on or before August 27, 1979. Any party upon whom a request for production of documents and things concerning the mertis of the common issues in this case shall serve either written objections within thirty days after service of the request or a written response within sixty days after service of the request.

VI. Discovery Period

Any party who desires to file suggestions concerning the date before which and after which occurrences may not be discovered into shall file those suggestions, supported by affidavits, on or before August 27, 1979.

VII. Depositions

A party desiring to take the deposition of any person shall give notice to all counsel of record, in writing, at least thirty days prior to the proposed deposition, which, in addition to the requirements of Rule 30(b), Fed. R. Civ. P., shall include a list of both the common issues and documents about which the prospective deponent will be questioned and, if the deponent will be questioned concerning specific rims or occurrences, notice shall be given of the type(s) of rim and/or the type of occurrence (*egs*. explosion during

inflation, explosion while mounting wheel on vehicle, explosion after mounting). The transcript of each deposition shall be promptly made available to all parties and shall be corrected and signed by the witness within thirty days of presentation of the transcript to the witness. Upon completion of interrogation, the deposition shall be adjourned until forty days after the transcript of the deposition has been made available to the parties, on which date, unless previously excused, the witness will appear for such further interrogation, if any, as any party may desire. Within ten days following the receipt of the transcript of a deposition, any party desiring further interrogation of the witness may serve notice, as set forth above, upon the parties to this action that additional interrogation will commence on the date until which the deposition has been adjourned. In the absence of notice of further interrogation of a witness with the time provided therefor, no further interrogation of that witness by any party will be permitted, except upon further order of this Court.

VIII. Deposition Schedule

No depositions concerning the merits of the common issues in this case shall be scheduled on or before October 29, 1979. Counsel for the parties to this action are hereby directed to file, on or before October 1, 1979, a joint proposed schedule of the depositions that will be taken during the period commencing October 29, 1979 and ending January 25, 1980.

IX.

The pending motions discussed above and those argued during the pretrial conference will be ruled without further discussion. It is, thus,

1) ORDERED that defendant Firestone's motion, filed May 24, 1979, to strike or, in the alternative, to dismiss, be, and hereby is, denied; and it is

2) ORDERED that, in *Henderson v. Firestone, et al.*, 79-0165-CV-W-2, Cooper Tire's motion for summary judgment, filed December 8, 1978, and Ford's motion for summary judgment, filed May 23, 1979, be, and hereby are, denied without prejudice to defendants Ford and Cooper Tire renewing the motions after the close of discovery; and it is

3) ORDERED that, in *Smith v. Firestone, et al.*, 79-0301-CV-W-2, defendant National Alfalfa's motion for summary judgment and defendant Firestone's motion, filed May 3, 1979, to file a cross-claim, be, and hereby are, denied without prejudice to defendants renewing the motions after the close of discovery; and it is

4) ORDERED that, in *Mixon v. General Motors, et al.*, 79-0340-CV-W-2, defendant General Motor's motion for summary judgment, filed May 18, 1979, be, and hereby is, denied without prejudice to defendant renewing the motion after the close of discovery; and it is

5) ORDERED that, in *Henderson v. Firestone*, 79-0165-CV-W-2, defendant Firestone's motion, filed May 8, 1979, to file a third-party complaint and defendant Cooper's motion, filed May 21, 1979, to file a third-party complaint, be, and hereby are, denied without prejudice to defendants refiling those motions in the transferor courts after the completion of discovery; and it is

6) ORDERED that plaintiffs' motion, filed July 12, 1979, for a protective order be, and hereby is, denied; and it is

7) ORDERED that the portions of plaintiffs' motions to compel Firestone, Goodyear, and General Tire to provide

lists of specific documents be, and hereby is, denied; and it is

8) ORDERED that plaintiffs' motion, filed July 26, 1979, to compel defendant Firestone to make a more complete answer to interrogatory number 1 be, and hereby is, denied; and it is

9) ORDERED that plaintiffs' motion, filed July 26, 1979, to compel defendant Firestone to answer interrogatories number 9, 10, and 11 be, and hereby is, granted; and it is

10) ORDERED that the attorneys for defendants Firestone, Goodyear, and General Tire meet and confer with plaintiffs' lead counsel for the purpose of reaching informal agreement on the remainder of the motions to compel filed June 25, 1979, July 26, 1979, August 2, 1979, and August 3, 1979 by plaintiffs and General Tire; and it is

11) ORDERED that plaintiffs' motion to compel defendants Firestone, Goodyear, and General Tire to make discovery, filed respectively, July 26, 1979, August 2, 1979 and August 3, 1979, and General Tire's motion, filed June 25, 1979, to compel plaintiff in 79-0165-CV-W-2 to make discovery be, and hereby are, denied without prejudice to plaintiff and General Tire renewing those motions if any matters remain unresolved after the conferences ordered above; and it is

12) ORDERED that Cooper Tire's motion, filed June 18, 1979, to produce for safekeeping be, and hereby is, denied; and it is

13) ORDERED that, on or before August 31, 1979, Mr. Risjord certify to this Court, by way of affidavit, that he has either met the consent requirement of DR 5-105 or terminated his representation of either Home Insurance

Company or the plaintiffs in any suit against Firestone; and it is

14) ORDERED that this Court's ruling on the question of Mr. Risjord's disqualifications because of a conflict of interests be, and hereby is, certified for immediate appeal pursuant to 28 U.S. C. §1292 (1976).

/s/ Wm. R. Collinson
District Judge

Dated: August 16, 1979.

Report.

(Title omitted in printing)

In the United States District Court for the Western District of Missouri, Western Division.

Filed: Aug. 28, 1979.

PLAINTIFFS' REPORT TO THE COURT
CONCERNING
PURPORTED CONFLICT OF JOHN C. RISJORD.

Attached hereto are the original executed Affidavits of Consent of the Home Insurance Company and rim litigants Butler, Goodwin, Hale and Rodriguez, and of John Risjord, their attorney.

By obtaining and submitting the foregoing consent of all involved clients, plaintiffs do not intend to concede the allegations of Firestone that there is any apparent conflict of interest nor do they agree with the conclusion of the Court that there is an apparent conflict of interest.

NIEWALD, RISJORD & WALDECK,
By /s/ JOHN C. RISJORD,
JOHN C. RISJORD
Lead and Liaison Counsel for Plaintiffs' Steering Committee.

State of Missouri County of Jackson—ss.

John C. Risjord of lawful age, being duly sworn upon oath, states that he is attorney of record in the following cases:

Cannova Enterprises, Inc., d/b/a Mr. C's 103 vs. Home Insurance Company, et al., No. 782397, in the Circuit Court of Jackson County, Missouri,

Butler vs. Firestone Tire & Rubber Company, et al., No. 78-0647-CV-W-2, M.D.L. No. 362, United States District Court for the Western District of Missouri, Western Division,

Goodwin vs. Firestone, et al., No. 78-0408-CV-W-2, M.D.L. No. 362, United States District Court for the Western District of Missouri, Western Division,

Hale vs. Firestone, No. 78-0266-CV-W-2, M.D.L. No. 362, United States District Court for the Western District of Missouri, Western Division, and

Rodriquez vs. Firestone Tire & Rubber Company, et al., No. 79-0086-CV-W-2, M.D.L. No. 362, United States District Court for the Western District of Missouri, Western Division.

Affiant has fully informed each client in the respective cases, being the Home Insurance Company, Joe Willie Butler, Edna Goodwin Perkins, individually and as next friend of her minor children, Larry and Linda Hale, and Rene Rodriguez, Luciano Rodriguez and Delphina Rodriguez, of the purported apparent conflict and the nature of the litigation involved therein, and has obtained their informed consent to continued representation.

/s/ John C. Risjord
John C. Risjord

Subscribed and sworn to before me this 28th day of August, 1979.

/s/ Kathryn D. Erdrich.
Notary Public

My commission expires:
July 22, 1982

(Certificate of service omitted in printing).

(Title omitted in printing)

In the United States District Court for the Western District of Missouri, Western Division.

AFFIDAVIT AND CONSENT OF HOME INSURANCE COMPANY OF NEW YORK.

State of Missouri, County of Jackson—ss.

Larry Wagner, of lawful age, being duly sworn upon oath states that he is an officer of the Home Insurance Company with the title of Assistant Secretary, that his duties include claims supervision of multiple lines of insurance, including property insurance, and specifically the case of Cannova Enterprises, Inc., d/b/a Mr. C's 103 vs. Home Insurance Company, et al., No. 782397, in the Circuit Court of Jackson County, Missouri at Kansas City, in which the firm of Niewald, Risjord & Waldeck is currently representing the Home Insurance Company, that he has been the regional claim manager of the Home Insurance Company for the past eight years and has personal knowledge of the relationship of the law firm of Niewald, Risjord & Waldeck and the Home Insurance Company and states that,

The Home Insurance Company and its affiliated companies do not nor have they ever to affiant's knowledge paid the law firm of Niewald, Risjord & Waldeck a retainer fee nor employed them on a retainer basis, that the law firm of Niewald, Risjord & Waldeck is not obligated to handle legal matters for the Home Insurance Company or any affiliated company, nor is the Home Insurance Company and its affiliated companies obligated in any way to employ the law firm of Niewald, Risjord & Waldeck, and

The Home Insurance Company and its affiliated companies employ a number of different law firms in the Kansas City area to handle claims litigation on an individual case-by-case basis, and the only case in which the law firm of

Niewald, Risjord & Waldeck and any member or associate thereof is currently employed by the Home Insurance Company or any of its affiliated companies is the case of Cannova Enterprises, Inc. vs. Home Insurance Company, et al., being a suit on fire insurance policies against several insurance companies and in which Home Insurance Company has 10% of the total coverage.

At no time to affiant's knowledge has the law firm of Niewald, Risjord & Waldeck ever received any information directly or indirectly from the Home Insurance Company regarding the Firestone Tire & Rubber Company nor been employed to represent directly or indirectly the Firestone Tire & Rubber Company or the Home Insurance Company with respect to any excess policy of the Home Insurance Company issued to the Firestone Tire & Rubber Company, and

The Home Insurance Company has been advised that the law firm of Niewald, Risjord & Waldeck represent plaintiffs in product liability cases against the Firestone Tire & Rubber Company which the attorneys state are:

Joseph W. Butler v. Firestone, et al., No. 78-0647-CV-W-2

Bobby C. Goodwin, et al. v. Firestone, et al., No. 78-0408-CV-W-1

Larry Hale, et al. v. Firestone, No. 78-0266-CV-W-2

Rodriguez v. Firestone, et al., No. H-77-288,

pending in the United States District Court for the Western District of Missouri and being so advised, the Home Insurance Company hereby consents to the continued representation of Niewald, Risjord & Waldeck of the Home In-

surance Company in the case of Cannova Enterprises, Inc., d/b/a Mr. C's 103 vs. Home Insurance Company, et al.

/s/ Larry Wagner Asst. Secretary
Larry Wagner, Assistant Secretary
for Home Insurance Company

On this 28 day of August, 1979, appeared before me, a Notary Public of Jackson County, Missouri, Larry Wagner, personally known to me to be an officer of the Home Insurance Company holding the office of Assistant Secretary who stated that the foregoing Affidavit and Consent is based upon his personal knowledge and that he subscribes and swears that the foregoing statement is true and correct.

/s/ Bertha Yeager
Notary Public

My commission expires:
BERTHA YEAGER M.C.E. 10/11/79.

(Title omitted in printing).

In the United States District Court for the Western District of Missouri, Western Division.

AFFIDAVIT AND CONSENT OF
JOE WILLIE BUTLER.

State of Mississippi, County of Leflore—ss.

Joe Willie Butler, of lawful age, being duly sworn upon oath, states that he is the party plaintiff in the suit entitled Joe Willie Butler vs. Firestone Tire & Rubber Company, et al., No. 78-0647-CV-W-2 in the United States District Court for the Western District of Missouri, Western Division, at Kansas City as part of M.D.L. No. 362 and that

He has been fully apprised of the fact that his Kansas City counsel, Niewald, Risjord & Waldeck currently represents the Home Insurance Company in a suit entitled Cannova Enterprises, Inc., d/b/a Mr. C's 103 vs. The Home Insurance Company, et al., in the Circuit Court of Jackson County, Missouri at Kansas City, No. 782397, a suit on policies of fire insurance arising from a fire loss on December 24, 1973 at 103rd street and State Line Road in Kansas City, Jackson County, Missouri; and that,

The law firm of Niewald, Risjord & Waldeck lists the Home Insurance Company as a representative client in the legal directory of Martindale-Hubbell and has for many years on a case-by-case basis handled litigation for the Home Insurance Company or its affiliated companies; and that,

The Home Insurance Company, or affiliated companies, do or may have an interest in the outcome of their case against Firestone in that Firestone has represented that an excess liability policy issued by the Home Insurance Company to Firestone may afford excess coverage for Firestone's liability to the undersigned plaintiff; and that,

With full knowledge of the relationship of the Niewald, Risjord & Waldeck law firm to the Home Insurance Company and its affiliates, the undersigned plaintiff consents and agrees to the continued representation by Niewald, Risjord & Waldeck of the undersigned plaintiff in his claim against the Firestone Tire & Rubber Company and other rim, wheel or tire manufacturers who are or may hereafter be named as parties.

His Mark

/s/ (X) Joe Willie Butler
Joe Willie Butler

On this 21 day of August, 1979, appeared before me, a Notary Public of Leflore County, Mississippi, Joe Willie Butler, personally known to me to be the plaintiff in the aforesaid lawsuit who has acknowledged that he understands the foregoing Affidavit and Consent, has conferred with counsel and has subscribed his name to the foregoing Affidavit and Consent as his own free act and deed.

/s/ (signature illegible)
Notary Public
Justice Court Judge
Dist. 1.
Leflore Co.

My commission expires:
12/30/1979

CONSENT AND APPROVAL OF COUNSEL

Yancy & Easley as referring counsel representing Joe Willie Butler acknowledge that they have fully explained the foregoing Affidavit and Consent to the client, which they approve and affirm.

Yancy & Easley,
By /s/ Cliff R. Easley, Jr.
Cliff R. Easley, Jr.
Attorneys for Joe Willie Butler.

(Title omitted in printing).

In The United States District Court for the Western District of Missouri, Western Division.

AFFIDAVIT AND CONSENT OF BOBBY CRAIG GOODWIN, CAROLYN MARIE GOODWIN, MELISSA DARLENE GOODWIN AND KATHY DIANE GOODWIN, MINORS, BY AND THROUGH THEIR NATURAL MOTHER AND NEXT FRIEND, EDNA GOODWIN PERKINS, AND EDNA GOODWIN PERKINS, INDIVIDUALLY.

State of Mississippi, County of Calhoun—ss.

Edna Goodwin Perkins, of lawful age, being duly sworn upon oath, states that she is the natural mother and next friend of Bobby Craig Goodwin, Carolyn Marie Goodwin, Melissa Darlene Goodwin and Kathy Diane Goodwin, Minors, and that she and her aforementioned children are parties plaintiff in the suit entitled Bobby Craig Goodwin, et al. v. Firestone Tire & Rubber Company, et al., No. 78-0408-CV-W-2 in the United States District Court for the Western District of Missouri, Western Division, at Kansas City as part of M.D.L. No. 362 and that,

She has been fully apprised of the fact that her Kansas City counsel, Niewald, Risjord & Waldeck currently represent the Home Insurance Company in a suit entitled Cannova Enterprises, Inc., d/b/a Mr. C's 103 vs. The Home Insurance Company, et al., in the Circuit Court of Jackson County, Missouri at Kansas City, No. 782397, a suit on policies of fire insurance arising from a fire loss on December 24, 1973 at 103rd Street and State Line Road in Kansas City, Jackson County, Missouri; and that,

The law firm of Niewald, Risjord & Waldeck lists the Home Insurance Company as a representative client in the legal directory of Martindale-Hubbell and has for many

years on a case-by-case basis handled litigation for the Home Insurance Company or its affiliated companies; and that;

The Home Insurance Company, or affiliated companies, do or may have an interest in the outcome of their case against Firestone in that Firestone has represented that an excess liability policy issued by the Home Insurance Company to Firestone may afford excess coverage for Firestone's liability to the undersigned plaintiff; and that,

With full knowledge of the relationship of the Niewald, Risjord & Waldeck law firm to the Home Insurance Company and its affiliates, the undersigned plaintiff consents and agrees to the continued representation by Niewald, Risjord & Waldeck of the undersigned plaintiff in her claims against the Firestone Tire & Rubber Company and other rim, wheel or tire manufacturers who are or may hereafter be named as parties.

/s/ Edna Goodwin Perkins
Edna Goodwin Perkins

On this 18 day of August, 1979, appeared before me, a Notary Public of Calhoun County, Mississippi, Edna Goodwin Perkins, natural mother and next friend of Bobby Craig Goodwin, Carolyn Marie Goodwin, Melissa Darlene Goodwin and Kathy Diane Goodwin, minors, on behalf of the aforementioned children and herself, personally known to me to be the plaintiffs in the aforesaid lawsuit who has acknowledged that she has read and understands the foregoing Affidavit and Consent, has conferred with counsel and has subscribed her name to the foregoing Affidavit and Consent as her own free act and deed.

/s/ Hazel Burnett
Notary Public

My commission expires:
Jan 22, 1980

CONSENT AND APPROVAL OF COUNSEL.

Yancy & Easley as referring counsel representing Bobby Craig Goodwin, Carolyn Marie Goodwin, Melissa Darlene Goodwin and Kathy Diane Goodwin, Minors, by and through their natural mother and next friend, Edna Goodwin Perkins, and Edna Goodwin Perkins, individually, acknowledge that they have fully explained the foregoing Affidavit and Consent to the client, which they approve and affirm.

Yancy & Easley,
By /s/ Cliff R. Easley, Jr.,
Cliff R. Easley Jr.,

Attorneys for Bobby Craig Goodwin, Carolyn Marie Goodwin, Melissa Darlene Goodwin and Kathy Diane Goodwin, Minors, by and through their Natural Mother and Next Friend, Edna Goodwin Perkins.

(Title omitted in printing).

In the United States District Court for the Western District of Missouri, Western Division.

AFFIDAVIT AND CONSENT OF LARRY HALE AND LINDA HALE,

State of Missouri, County of Vernon—ss.

Larry Hale and Linda Hale, of lawful age, being duly sworn upon oath, state that they are parties plaintiff in the suit entitled Larry Hale and Linda Hale v. Firestone Tire & Rubber Company, No. 78-0266-CV-W-2, in the United States District Court for the Western District of Missouri, Western Division, at Kansas City as part of M.D.L. No. 362, and that

They have been fully apprised of the fact that their counsel, Niewald, Risjord & Waldeck, currently represent the Home Insurance Company in a suit entitled Cannova Enterprises, Inc., d/b/a Mr. C's 103 vs. The Home Insurance Company, et al., in the Circuit Court of Jackson County, Missouri at Kansas City, No. 782397, a suit on policies of fire insurance arising from a fire loss on December 24, 1973 at 103rd Street and State Line Road in Kansas City, Jackson County, Missouri; and that,

The law firm of Niewald, Risjord & Waldeck list the Home Insurance Company as a representative client in the legal directory of Martindale-Hubbell and has for many years on a case-by-case basis handled litigation for the Home Insurance Company or its affiliated companies; and that,

The Home Insurance Company, or affiliated companies, do or may have an interest in the outcome of their case against Firestone in that Firestone has represented that an excess liability policy issued by the Home Insurance Company to Firestone may afford excess coverage for Firestone's liability to the undersigned plaintiffs; and that,

With full knowledge of the relationship of the Niewald, Risjord & Waldeck law firm to the Home Insurance Company and its affiliates, the undersigned plaintiffs consent and agree to the continued representation by Niewald, Risjord & Waldeck of the undersigned plaintiffs in their claims against the Firestone Tire & Rubber Company and other rim, wheel or tire manufacturers who are or may hereafter be named as parties.

/s/ Larry J. Hale
Larry Hale

/s/ Linda K. Hale
Linda Hale

On this 15 day of August, 1979, appeared before me, a Notary Public of Vernon County, Missouri, Larry Hale and Linda Hale, personally known to me to be the plaintiffs in the aforesaid lawsuit who have acknowledged that they have read and understand the foregoing Affidavit and Consent and have subscribed their names to the foregoing Affidavit and Consent as their own free act and deed.

/s/ Jacquelyn J. Hardy
Notary Public

My commission expires:
Nov. 23, 1980

(Title omitted in printing)

In the United States District Court for the Western District of Missouri, Western Division.

AFFIDAVIT AND CONSENT OF RENE RODRIGUEZ, LUCIANO RODRIGUEZ AND DELPHINA RODRIGUEZ,

State of Texas, County of Victoria—ss.

Rene Rodriguez, Luciano Rodriguez and Delphina Rodriguez, of lawful age, being duly sworn upon oath, state that they are parties plaintiff in the suit entitled Rene Rodriguez, Luciano Rodriguez and Delphina Rodriguez vs. Firestone Tire & Rubber Company, et al., No. C.A. H-77-288 Consolidated with C.A. H-77-1789 in the United States District Court for the Southern District of Texas, which is currently transferred to the United States District Court for the Western District of Missouri, Western Division, at Kansas City as part of M.D.L. No. 362 and that,

They have been fully apprised of the fact that their Kansas City counsel, Niewald, Risjord & Waldeck currently represent the Home Insurance Company in a suit entitled Cannova Enterprises, Inc., d/b/a Mr. C's 103 vs. The Home Insurance Company, et al, in the Circuit Court of Jackson County, Missouri at Kansas City, No. 782397, a suit on policies of fire insurance arising from a fire loss on December 24, 1973 at 103rd Street and State Line Road in Kansas City, Jackson County, Missouri; and that,

The law firm of Niewald, Risjord & Waldeck list the Home Insurance Company as a representative client in the legal directory of Martindale-Hubbell and has for many years on a case-by-case basis handled litigation for the Home Insurance Company or its affiliated companies; and that,

The Home Insurance Company, or affiliated companies, do or may have an interest in the outcome of their case

against Firestone in that Firestone has represented that an excess liability policy issued by the Home Insurance Company to Firestone may afford excess coverage for Firestone's liability to the undersigned plaintiffs; and that,

With full knowledge of the relationship of the Niewald, Risjord & Waldeck law firm to the Home Insurance Company and its affiliates, the undersigned plaintiffs consent and agree to the continued representation by Niewald, Risjord & Waldeck of the undersigned plaintiffs in their claims against the Firestone Tire & Rubber Company and other rim, wheel or tire manufacturers who are or may hereafter be named as parties.

/s/ Rene Rodriguez
Rene Rodriguez

/s/ Luciano Rodriguez
Luciano Rodriguez

/s/ Delphina Rodriguez
Delphina Rodriguez

On this 17th day of August, 1979, appeared before me, a Notary Public of Victoria County, Texas, Rene Rodriguez, Luciano Rodriguez and Delphina Rodriguez, personally known to me to be the plaintiffs in the aforesaid lawsuit who have acknowledge that they have read and understand the foregoing Affidavit and Consent, have conferred with counsel and have subscribed their names to the foregoing Affidavit and Consent as their own free act and deed.

/s/ Donna Borth
Notary Public

My commission expires:
7-24-81

CONSENT AND APPROVAL OF COUNSEL.

Kilgore, Cole & McManus as referring counsel representing Rene Rodriguez, Luciano Rodriguez and Delphina Rodriguez acknowledge that they have fully explained the foregoing Affidavit and Consent to the clients, which they approve and affirm.

KILGORE, COLE & MCMANUS,
By /s/ Steve Q. McManus,
Steve Q. McManus,
Attorneys for Rene Rodriguez,
Luciano Rodriguez and Delphina Rodriguez.

Notice of Appeal.

(Title omitted in printing).

In the United States District Court for the Western District of Missouri, Western Division.

Filed: Sept. 11, 1979.

NOTICE OF APPEAL

Notice is hereby given that The Firestone Tire & Rubber Company (hereinafter "Firestone"), a defendant and an aggrieved party in this Multi-Piece Rim Products Liability Litigation, hereby appeals to the United States Court of Appeals for the Eighth Circuit from the following:

1. From so much of the Second Pretrial Order entered in this cause of August 16, 1979 (hereinafter "Second Pretrial Order") as constitutes a ruling on the Motion of defendant Firestone entitled "Motion of The Firestone Tire & Rubber Company to Disqualify John C. Risjord" (hereinafter "Risjord"), filed in this Court on May 24, 1979, including the following portions of the said Second Pretrial Order:

a. Part I thereof entitled "Firestone's Motion to disqualify Risjord" and,

b. The order contained therein reading as follows:

> "The pending motions discussed above and those argued during the pretrial conference will be ruled without further discussion. It is, thus,
>
> * * *
>
> "13) ORDERED that, on or before August 31, 1979, Mr. Risjord certify to this Court, by way of affidavit, that he has either met the consent requirement of DR5-105 or terminated his representation of either Home Insurance Company

or the plaintiffs in any suit against Firestone . . .";

and,

2. From the above-described portions of the said Second Pretrial Order as affected by Plaintiffs' Report to the Court Concerning Purported Conflict of John C. Risjord with Affidavits and Consents of the Home Insurance Company and of rim litigants Joe Willie Butler, Edna Goodwin Perkins, Linda and Larry Hale, and Rene, Luciano and Delphina Rodriguez, and of John C. Risjord, their attorney, attached thereto, filed in this Court on August 28, 1979.

DATED: September 6, 1979.

WILLIAM FREIVOGEL
ROSS, HARDIES, O'KEEFE, BABCOCK AND PARSONS,
and

/s/ WILLIAM H. SANDERS,
William H. Sanders,
BLACKWELL SANDERS MATHENY WEARY & LOMBARDI,
Attorneys for Defendant
The Firestone Tire & Rubber Company.

(Certificate of service omitted in printing).

Motion.

(Title omitted in printing).

In the United States District Court of the Western District of Missouri, Western Division.

MOTION AND REQUEST FOR ORAL ARGUMENT OF THE FIRESTONE TIRE & RUBBER COMPANY REGARDING CONTEMPT OF JOHN C. RISJORD.

Defendant The Firestone Tire & Rubber Company (''Firestone''), by its attorneys, hereby moves the Court for entry of an order that John C. Risjord be adjudged guilty of contempt of this Court.

This Motion is made upon the grounds that said John C. Risjord violated this Court's Order of August 16, 1979 (order paragraph 13 of the Second Pretrial Order) by failing to certify to this Court that he has satisified either of the conditions therein specified and in failing to satisfy either of said conditions, all as more particularly set forth in the annexed Brief and Suggestions.

This Motion is based upon the annexed Second Pretrial Order in these proceedings made and entered under date of August 16, 1979, the Transcript of Proceedings of August 10, 1979 previously filed herein, the document and attachments filed by John C. Risjord under date of August 28, 1979 entitled ''Plaintiffs' Report to the Court Concerning Purported Conflict of John C. Risjord,'' and the annexed Brief and Suggestions.

Pursuant to Rule 10(a) of this Court, Firestone hereby requests oral argument of this Motion.

Dated: October 5th, 1979.

William Freivogel,
Ross, Hardies, O'Keefe, Babcock
and Parsons,
and
/s/ William H. Sanders,
William H. Sanders,
Blackwell Sanders Matheny Weary
& Lombardi,
Attorneys for Defendant
The Firestone Tire & Rubber Company.

(Certificate of service omitted in printing)

Supplementary Brief.

(Title omitted in printing.)

In the United States District Court of the Western District of Missouri, Western Division.

SUPPLEMENTARY BRIEF AND RESPONSE OF JOHN C. RISJORD IN OPPOSITION TO THE MOTION AND REQUEST FOR ORAL ARGUMENT OF THE FIRESTONE TIRE & RUBBER COMPANY REGARDING CONTEMPT OF JOHN C. RISJORD AND THE MOTION OF FIRESTONE FOR DISQUALIFICATION.

The Home Insurance Company has discharged John C. Risjord and Niewald, Risjord & Waldeck from the case of Cannova v. The Home Insurance Company, et al., Docket Number 782,397, in the Circuit Court of Jackson County, Missouri, which was the only case in which Risjord or his law firm represented the Home Insurance Company or any member company of the Home Insurance Group. A true copy of the letter of discharge, stating the reason therefor, and an attested copy of the Withdrawal of Appearance duly filed with the Clerk of the Circuit Court of Jackson County, Missouri are attached hereto.

Niewald, Risjord & Waldeck,
By /s/ John C. Risjord,
John C. Risjord,
Lead and Liaison Counsel for Plaintiffs.

AFFIDAVIT,

State of Missouri, County of Jackson—ss.

John C. Risjord of lawful age, being duly sworn upon oath, states that the attached letter is a true copy of the notice of discharge by the Home Insurance Company dated and received November 6, 1979, and a true copy of the Withdrawal on behalf of affiant and his firm from the Cannova case duly filed with the Clerk of the Circuit Court of Jackson County, Missouri.

/s/ John C. Risjord
John C. Risjord

Subscribed and sworn to before me this 12th day of November,

/s/ Margaret P. Nelson
Notary Public

In the Circuit Court of Jackson County, Missouri.

Cannova Enterprises, Inc., d/b/a Mr. C's 103, et al., Plaintiffs, vs. Great American Insurance Company, et al., Defendants. No. 782, 397 Civil E.

Filed: Nov 7, 1979.

WITHDRAWAL OF APPEARANCE

COME NOW John C. Risjord and Niewald, Risjord & Waldeck and hereby withdraw as attorneys of record for the Home Insurance Company. A copy of the request of the Home Insurance Company is attached hereto as Exhibit A.

NIEWALD, RISJORD & WALDECK,
By /s/ JOHN C. RISJORD,
John C. Risjord

Attorneys for Aetna Casualty & Surety Co., Great American Insurance Co., St. Paul Fire & Marine Insurance Co., Northwestern National Insurance Co., and Continental Insurance Company.

(Certificate of service omitted in printing)

Approved this 7th day of November, 1979.
By /s/ Lewis W. Clymer

A TRUE COPY - ATTEST
CIRCUIT COURT OF JACKSON COUNTY, MO.
COURT ADMINISTRATOR'S OFFICE
DEPARTMENT OF JUDICIAL RECORDS

By /s/ (signature illegible)

Exhibit A.

THE HOME INSURANCE COMPANY

911 Main St., P.O. Box 13166, Kansas City, Missouri 64199

Telephone 816 221-3455

November 6, 1979

Mr. John C. Risjord
Niewald, Risjord & Waldeck
2500 Commerce Tower
911 Main Street
Kansas City, Missouri 64105

RE: Cannova Enterprises, Inc. d/b/a Mr. C's 103
vs. Home Insurance Company, et al
Case No. 782397

Dear Mr. Risjord:

Your file will reflect the only case you or your firm is presently handling for the Home Insurance Company of New York and its affiliated companies is the case of Cannova Enterprises, Inc. d/b/a Mr. C's 103 vs. Home Insurance Company, et al, Case No. 782397 in the Circuit Court of Jackson County, Missouri at Kansas City. That case is one in which you were retained by the General Adjustment Bureau. The Home did not have any choice but to accept your representation of the Home's minor interest in that dispute.

The case was the subject of the Affidavit and consent of Home Insurance Company of New York filed in the case styled in Re: Multi-Piece Rim Products Liability Litigation, M.D.L. No. 362 currently pending in the United States District Court for the Western District of Missouri, Western Division. The Affidavit and Consent was executed pursuant

to an Order entered by the Honorable William R. Collinson, District Judge.

The Home Insurance Company of New York has now been informed that the Affidavit and Consent as filed has given rise to considerable expenditure of Court time and the time of the litigants in the M.D.L. No. 362 as well as causing the filing of a separate suit in the United States District Court for the Western District of Missouri which will generate the expenditure of considerable time and money in the defense of the same over a very inconsequential matter to wit: your continued representation of the Home Insurance Company in the Cannova case.

In view of the time and expense involved to this time and the future time and expense that will necessarily be involved, I have been asked to instruct you and your firm to immediately withdraw your appearance as attorneys for the Home Insurance Company in the Cannova case. Arrangements have been made for other counsel to enter their appearance.

This request does not mean to infer in any way that your representation of this company has in any way placed you in a position to obtain from the Home any information it may have received as insurance carrier for Firestone. The fact is now, and has always been, that you have not had access to nor will you ever have access to any information which The Firestone Tire & Rubber Company has made available or will make available to the Home Insurance Company regarding its products. The fact is that litigation is expensive and this inconsequential relationship between you, your firm and the Home Insurance Company does not merit this kind of expense.

Looking forward to receiving your motion for withdrawal as attorneys by return mail, I remain

Very truly yours,
/s/ LARRY G. WAGNER,
Larry G. Wagner
ASSISTANT SECRETARY, CLAIMS

LGW:kb

(Certificate of service omitted in printing).

Withdrawal of Motion.

(Title omitted in printing).

In the United States District Court for the Western District, of Missouri, Western Division.

Filed: Nov. 30, 1979.

FIRESTONE'S WITHDRAWAL OF ITS MOTION FOR ORDER HOLDING JOHN C. RISJORD IN CONTEMPT.

The Firestone Tire & Rubber Company hereby withdraws its Motion for Order Holding John C. Risjord in contempt for the reasons stated in the accompanying Suggestions.

William Freivogel,
Ross, Hardies, O'Keefe
Babcock & Parsons,

William H. Sanders,
Blackwell, Sanders, Matheny
Weary & Lombardi,

By /s/ William H. Sanders
William H. Sanders

(Title omitted in printing).

In the United States District Court for the Western District of Missouri, Western Division.

SUGGESTIONS IN SUPPORT OF FIRESTONE'S WITHDRAWAL OF ITS MOTION FOR ORDER HOLDING JOHN C. RISJORD IN CONTEMPT.

The dismissal of John C. Risjord ("Risjord") by The Home Insurance Company ("Home") in *Cannova v. Great American* on November 6, 1979, technically does not relieve Risjord of the consequences of his failure to comply with this Court's order during the period he was not in compliance. However, in light of the fact that Risjord is now in the status of not representing Home, and in light of the fact that a contempt order would serve no useful purpose and would not now under the circumstances be entered anyway, The Firestone Tire & Rubber Company ("Firestone") is withdrawing its Motion.

Risjord's technical compliance with *this* Court's order does not, of course, satisfy Firestone's objection to the order or resolve the matter now pending in The United States Court of Appeals for the Eighth Circuit.

It should be further noted that Home's letter discharging Risjord does nothing to dispel the notion that Home is actively seeking to keep Risjord in the rim cases because of his unique intentional tort theories. Home could have written a very simple, straightforward letter; instead, the letter reads like a brief in favor of Risjord's continuing in these cases.

This course of conduct is the subject of *Firestone v. Home*, 79-0961-CV-W-2, now pending in this Court.

William Freivogel,
Ross, Hardies, O'Keefe,
Babcock & Parsons,

-and-

/s/ William H. Sanders,
William H. Sanders,
Blackwell, Sanders, Matheny,
Weary & Lombardi,
Attorneys for Defendant
Firestone Tire & Rubber Company.

(Certificate of service omitted in printing).

Affidavit.

(Title omitted in printing).

In the United States District Court for the Western District of Missouri, Western Division.

State of Ohio, County of Summit—ss.

AFFIDAVIT OF JOHN B. CAROTHERS III.

John B. Carothers III, being duly sworn, states as follows:

1. He is an associate in the law firm of Ross, Hardies, O'Keefe, Babcock & Parsons, One IBM Plaza, Suite 3100, Chicago, Illinois 60611, telephone number 312-467-9300.

2. Among his duties is assisting in the coordination of litigation involving wheels and rims manufactured by Firestone Steel Products Company, a division of The Firestone Tire & Rubber Company (hereinafter "Firestone").

3. Among said duties have been dealings with the Home Insurance Company, an excess liability insurance carrier for Firestone, and Johnson & Higgins, Inc., Firestone's insurance broker.

4. The attached document designated Exhibit A is a true and correct copy of a letter received by Johnson & Higgins, Inc. from the Home Insurance Company.

5. Further affiant sayeth not.

/s/ John B. Carothers III
John B. Carothers III

SUBSCRIBED and SWORN to on
this 5th day of December, 1979.
/s/ Joyce L. Webb,
Notary Public
Joyce L. Webb, Notary Public
My Commission Expires Feb. 27, 1981

Exhibit A.

THE HOME INSURANCE COMPANY
Manchester, New Hampshire

Executive offices: 59 Maiden Lane, New York, N.Y. 10038

November 15, 1979

Johnson & Higgins, Inc.
95 Wall Street
New York, New York 100005

Attention: A. Stazzone
File: 311-E-738 002
Insured: Firestone Tire & Rubber Co.
Date of Accident: September 23, 1975
Plaintiff: L. Rodriguez

Gentlemen:

We are in receipt of an amended Complaint brought in the United States District Court for Southern District of Texas, Houston Division, on the above captioned claim.

A review of this Complaint reveals that the plaintiff is alleging that the insured deliberately withheld information regarding their products.

We refer you to the policy definition of "Occurrence" which states:

> "The term Occurrence wherever used herein shall mean an accident or happening or event or continuous or repeated exposure to conditions which unexpectedly and unintentionally result in personal injury, property damage or advertising liability during the policy period. All such exposure to substantially the same general conditions emanating from one premises location shall be deemed one occurrence".

In light of the foregoing, The Home Insurance Company must reserve all its rights in connection with the damages sought by the plaintiff in this case.

Please convey our position to the insured and provide me with a copy of your covering letter.

Very truly yours,
/s/ Francis Lynch
Francis Lynch
Supervisor, Excess Claims
Claims Department

FL:cg

Opinion and Judgment.

United States Court of Appeals for the Eighth Circuit.

In re: Multi-Piece Rim Products Liability Litigation. Firestone Tire & Rubber Co., Appellant, v. John C. Risjord, Appellee. No. 79-1781.

Appeal from the United States District Court for the Western District of Missouri.

Submitted: December 28, 1979.

Filed: January 7, 1980.

Before GIBSON, Chief Judge, LAY, HEANEY, BRIGHT, ROSS, STEPHENSON, HENLEY and McMILLIAN, Circuit Judges, sitting en banc.

LAY, Circuit Judge.

Personal injury claimants brought suit against the Firestone Rubber Co. and Firestone moved thereafter that claimant's counsel, John C. Risjord, and his law firm be disqualified from representing them because of an alleged conflict of interest with Firestone's insurer. The district court, the Hon. William R. Collinson presiding, ordered counsel Risjord to comply with the consent requirement of Disciplinary Rule 5-105 of the Code of Professional Responsibility of the Missouri Supreme Court or terminate his representation of either plaintiffs or the insurer.[1] Risjord thereafter complied with DR5-105(C) which required that Risjord receive consent from the insurance carriers or terminate his representation in the suit. The district court ruled that Risjord had complied with his order and that Risjord

---

[1]DR5-105(C) provides:

> In the situations covered by DR5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

should not be disqualified from the litigation. The district court further certified his ruling on the disqualification for interlocutory appeal pursuant to 28 U.S.C. §1292(b).

Rather than obtain permission to appeal from this court, as required under section 1292(b), Firestone simply filed a notice of appeal. Risjord challenges the order as not being appealable since it is not a final order. The law in this circuit has been that an order denying a motion for disqualification of counsel is final under the collateral order doctrine recognized by the Supreme Court in *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949). *See Fred Weber, Inc. v. Shell Oil Co.*, 566 F.2d 602, 606-07 (8th Cir. 1977), *cert. denied*, 436 U.S. 905 (1978); *Arkansas v. Dean Foods Products Co., Inc.*, 605 F.2d 380 (8th Cir. 1979).

Recently, the Sixth Circuit overruled an earlier decision and held an order denying a motion for disqualification of counsel would no longer be appealable under the collateral order doctrine. *Melamed v. ITT Continental Baking Co.*, 592 F.2d 290 (6th Cir. 1979). The Sixth Circuit stated:

> Motions to disqualify an opponent's counsel can easily be simply "disguised harrassment [sic]".
>
> . . . .
>
> A rule allowing interlocutory appeals here would provide litigants with yet another device by which to delay final determination on the merits, and would lead the court to divert its attention from the central issues in the case.

Id. at 295, (footnote omitted) (quoting in part *Community Broadcasting of Boston, Inc. v. FCC*, 546 F.2d 1022, 1027 (D.C. Cir. 1976)).

We have reconsidered *Weber* and *Dean Foods* and now agree with the position of the District of Columbia, Sixth and Ninth Circuits; it is the opinion of this court that *Weber*

and *Dean Foods* should be and hereby are overruled.[2] *See generally*, Comment, *The Appealability of Orders Denying Motions for Disqualification of Counsel in the Federal Courts*, 45 U. Chicago L. Rev. 450 (1978).

In so holding we recognize there exists a fundamental distinction between a denial of a motion of disqualification of counsel and a grant of a motion for disqualification. In the latter case of disqualification we will still continue to apply the collateral order doctrine and recognize the order as appealable. We also concur with the Sixth Circuit's opinion, which allows for immediate review in the exceptional case where irreparable harm could occur by denial of an interlocutory appeal. The Sixth Circuit observed:

> We believe our position denying interlocutory appeal of orders refusing to disqualify counsel to be fully consonant with the Supreme Court's holding in *Cohen*. Although "collateral" to the main proceeding, an order denying a motion to disqualify does not, in most cases, implicate any claim of right that will be irreparably lost on appeal from final judgment. In the exceptional case, where irreparable harm would indeed result, the movant may petition this court for a writ of mandamus under 28 U.S.C. §1651 (1970), the All Writs Act. This approach will afford the court the flexibility necessary to prevent serious injustice while advising litigants of the court's extreme reluctance to depart from the final judgment rule.

Melamed v. ITT Continental Baking Co., 592 F.2d at 296 (quoting *Community Broadcasting of Boston, Inc. v. FCC*, 546 F.2d 1022, 1027-28 (D.C. Cir. 1976)).

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[2]This opinion has been circulated to the court en banc, and all active judges concur.

In fairness to the appellant in the instant case, we hold the overruling of *Weber* and *Dean Foods* to be prospective only. Thus, we permit the instant appeal. Nevertheless, we have carefully reviewed the pleadings, and briefs, and have concluded that the district court did not abuse its discretion in refusing to disqualify counsel. Accordingly, the motion to dismiss is denied, the district court's denial of the motion to disqualify is affirmed, and the case is remanded to the district court for further proceedings.

IT IS SO ORDERED.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

Judgment.

United States Court of Appeals for the Eighth Circuit.

In Re: Multi-Piece Rim Products Liability Litigation Firestone Tire & Rubber Company, Appellant, vs. John C. Risjord, Appellee. No. 79-1781.

September Term, 1979.

Appeal from the United States District Court for the Western District of Missouri.

This cause came on to be considered on the original designated record of the United States District Court for the Western District of Missouri and briefs of the respective parties without oral argument.

On consideration whereof, it is now here ordered and adjudged by this Court, that appellee's motion to dismiss is denied.

And it is further ordered that the said District Court's denial of the motion to disqualify is affirmed.

And it is further ordered by this Court that this cause be, and it is hereby, remanded to the said District Court for proceedings consistent with the opinion of this Court.

January 7, 1980

Cost taxed in favor of appellee:

Cost of printing 10 copies of brief:	$553.64
Total costs of appellee for recovery from appellant in the U.S. District Court:	$553.64

[Entered January 7, 1980]

Order entered in accordance with opinion:

/s/ Robert D. St. Vrain

Clerk, U.S. Court of Appeals, 8th Circuit.

Complaint.

In the United States District Court for the District of Kansas.

Edward Campbell, Plaintiff, v. The Goodyear Tire & Rubber Company, and F.M.C. Corporation, Defendants. Case No. 79-1314.

Filed Jun. 29, 1979.

COMPLAINT

COUNT I.

Comes now plaintiff and for Count I of his Complaint states as follows:

1. Plaintiff is an individual citizen of the State of Kansas, residing in Solomon, Dickinson County, Kansas; The Goodyear Tire & Rubber Company (Goodyear) is a corporation organized and existing pursuant to the laws of the State of Ohio with principal offices for the transaction of business in Akron, Summit County, Ohio; F.M.C. Corporation (FMC) is a Delaware corporation with principal offices for the transaction of business in a state other than Kansas; so that defendants are citizens of states other than Kansas and not citizens of Kansas and there is complete diversity of citizenship between the parties.

2. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00); exclusive of interest and cost, to-wit: Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000.00), and this Court has jurisdiction in the first instance pursuant to Section 1332(a) U.S.C.

3. At all times hereinafter alleged defendants were duly authorized to transact business in the State of Kansas and have offices and distribution centers for their businesses within the District of Kansas.

4. On or about July 7, 1977, an M-type multi-piece rim manufactured by defendant, The Goodyear Tire & Rubber Company, and sold and distributed by defendants Goodyear and FMC, exploded at Salina, Saline County, Kansas, while plaintiff was attempting to deflate it, causing castastrophic injuries to plaintiff and resulting in his total and permanent disability.

5. At the time of his injuries, plaintiff was eighteen (18) years old and had been employed by Royal Tire Company, Salina, Saline County, Kansas, for approximately one month. Plaintiff and a co-employee of the Royal Tire Company, under the supervision of another Royal Tire employee, repaired a tire and tube removed from the M-type rim and inflated the assembly in a safety cage, using a clamp-on air chuck attached to an air hose which was operated by remote control and an automatic shut-off device. Plaintiff and his co-employees removed the inflated assembly from the safety cage and the M-type rim explosively separated and struck plaintiff causing the following injuries, without limitation; total loss of vision in the left eye, severe limitation of vision in the right eye, loss of sense of taste, loss of sense of smell, skull fracture, comminuted facial fractures, brain damage, loss of memory, facial disfigurement, separation of both knees, both elbows, and both shoulders, all of which caused great pain, mental anguish, psychological and emotional derangement and suffering, and all of which are disabling and permanent in nature and which have required and will continue to require medical treatment and expenses, and which deprive plaintiff of his ability to support and maintain himself.

6. At the time of the manufacture, sales and distribution of the M-type multi-piece rim by defendants, said rim was defective in that it had a proclivity to blow apart and explode which was known by defendants when put to the use in-

tended and anticipated and defendants failed to warn of said defect and failed to recall, retrofit or otherwise remedy design defects and known hazards of such multi-piece rims.

7. At the time of plaintiff's injuries, the multi-piece rim was in substantially the same condition as when manufactured, sold and distributed by defendants and was being used by plaintiff as the product was reasonably intended to be used and as defendants anticipated its use and because of the aforesaid defect in the design and manufacture of the M-type multi-piece rim it exploded, totally and permanently injuring and disabling plaintiff as specified before.

8. At the time of the design, development, manufacture, distribution, licensing and sale of the subject multi-piece rim assembly and prior to plaintiff's injuries, defendant knew that the design, configuration, materials and construction of the multi-piece Goodyear rim components presented an extreme and unusual hazard to the motoring public and particularly to anyone attempting to mount an inflated multi-piece assembly on a vehicle. In spite of the existence of known hazards and numerous serious and fatal injuries over a period of some fifty-five years, defendant The GoodYear Tire & Rubber Company negligently, willfully or intentionally:

(a) failed and refused to redesign the multi-piece rims and failed to thereby preclude a mixture of parts;

(b) failed to recall such defective rims from the market;

(c) failed to develop, test and distribute safety devices to prevent explosive separation of multi-piece rims;

(d) failed to warn adequately of the hazards involved in every step of the assembly and usage of such rims;

(e) failed to develop any meaningful engineering criteria for determination of proper assembly and the extent of the hazard involved in improper assembly;

(f) failed to notify users of such rims of the risk involved in standing in close proximity to a vehicular mounting of inflated assemblies;

(g) failed to replace the multi-piece assembly with safe rims of single-piece design or of safer multi-piece designs;

(h) failed to advise the United States Department of Transportation and state agencies of the existence and extreme hazards presented by the defects inherent in multi-piece rims;

(i) failed to notify and fully inform the United States Department of Transportation and state agencies of the existence of the single-piece rim or of safer multi-piece rims as a solution to the problem;

(j) deliberately withheld information and gave misinformation with respect to the nature, extent, cause and serious consequences of the defects in such rims and of the feasibility of recall or retrofit, before, during and after the attempted investigation by the Office of Defects Investigation, United States Department of Transportation, and state agencies, of Goodyear multi-piece rims, and after being requested or required by the United States Department of Transportation and state agencies to develop and distribute foolproof or safe rims and to distribute adequate, clear and specific warnings with respect to such defects and hazards inherent in multi-piece rims failed to do so in a thorough, timely and specific manner;

(k) failed to discontinue production and failed to adequately test its multi-piece rims when defendant knew better, safer products were available and knew that adequate and appropriate tests would establish

defects which permit the bursting of the parts of the said rims with resulting injuries or death;

(l) deliberately misrepresented to the Department of Transportation, state agencies, and to the general public the fact that the multi-piece rim was a defective and dangerous design concept remedial only by a total manufacturer's notification campaign, commonly known as recall or retrofit.

9. Defendant FMC knew of the inherent hazards in multi-piece rim assemblies, including the M-type, and placed a decal on the cab of its product, one Link-Belt Mobile Crane, Model 138, which contained the following statement:

"DANGER STAND CLEAR WHEN INFLATING OR DEFLATING TIRES. IF RIM SIDE OR LOCK RING BLOWS OUT SEVERE INJURY MAY RESULT."

The foregoing statement was inadequate and incomplete in that it was placed on the vehicle itself and not on the parts of the M-type multi-piece rim assembly so that a tire buster such as the plaintiff would not come in contact with the statement and would not have the benefit of the purported warning when he was in the process of inflating or deflating multi-piece rim assemblies which had been removed from the vehicle.

10. Plaintiff states that the conduct and failure of defendants Goodyear and FMC and their individual officers and employees acting as the agents of Goodyear and FMC, were in willful, wanton, reckless and grossly negligent disregard for the safety of the public and particularly the plaintiff in that defendants' conduct was motivated solely by profit and convenience without regard to safety or preservation of human life and was oppressive, and as a result of the aforesaid, plaintiff is entitled to exemplary damages.

11. Plaintiff has sustained actual damage in the sum of Two Million Five Hundred Thousand Dollars ($2,500,-000.00), and seeks exemplary damages in the sum of Twenty-Five Million Dollars ($25,000,000.00).

WHEREFORE, plaintiff prays judgment against defendants in Count I in the sum of Two Million Five Hundred Thousand Dollars ($2,500,000.00) actual damages, and Twenty-Five Million Dollars ($25,000,000.00) exemplary damages, and his costs herein expended.

COUNT II.

Comes now plaintiff and for Count II of his Complaint states as follows:

1. Plaintiff is an individual citizen of the State of Kansas, residing in Solomon, Dickinson County, Kansas; The Goodyear Tire & Rubber Company (Goodyear) is a corporation organized and existing pursuant to the laws of the State of Ohio with principal offices for the transaction of business in Akron, Summit County, Ohio; F.M.C. Corporation (FMC) is a Delaware corporation with principal offices for the transaction of business in a state other than Kansas; so that defendants are citizens of states other than Kansas and not citizens of Kansas and there is complete diversity of citizenship between the parties.

2. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00); exclusive of interest and costs, to-wit: Twenty-Seven Million Five Hundred Thousand Dollars ($27,500,000.00), and this Court has jurisdiction in the first instance pursuant to Section 1332(a) U.S.C.

3. At all times hereinafter alleged defendants were duly authorized to transact business in the State of Kansas and have offices and distribution centers for their business within the District of Kansas.

4. On or about July 7, 1977, an M-type multi-piece rim manufactured by defendant Goodyear and sold and distributed by defendants Goodyear and FMC, exploded at Salina, Saline County, Kansas, while plaintiff was attempting to deflate it, causing catastrophic injuries to plaintiff and resulting in his total and permanent disability.

5. At the time of his injuries, plaintiff was eighteen (18) years old and had been employed by Royal Tire Company, Salina, Saline County, Kansas, for approximately one month. Plaintiff and a co-employee of the Royal Tire Company, under the supervision of another Royal Tire Company employee, repaired a tire and tube removed from the M-type rim and inflated the assembly in a safety cage, using a clamp-on air chuck attached to an air hose which was operated by remote control and an automatic shut-off device. Plaintiff and his co-employees removed the inflated assembly from the safety cage and the M-type rim explosively separated and struck plaintiff causing the following injuries, without limitation; total loss of vision in the left eye, severe limitation of vision in the right eye, loss of sense of taste, loss of sense of smell, skull fracture, comminuted facial fractures, brain damage, loss of memory, facial disfigurement, separation of both knees, both elbows, and both shoulders, all of which caused great pain, mental anguish, psychological and emotional derangement and suffering, and all of which are disabling and permament in nature and which have required and will continue to require medical treatment and expenses, and which deprive plaintiff of his ability to support and maintain himself.

6. Defendant Goodyear, and certain executive officers and employees conspiring with other manufacturers defrauded plaintiff, the United States of America, the several States, state and federal courts, litigants, and the general public for the purposes of avoiding a manufacturers' noti-

fication campaign, commonly known as recall or retrofit, and avoiding liability to litigants and claimants killed, blinded, maimed and otherwise injured by multi-piece rims, over a period exceeding fifty years, including specific acts and conduct similar thereto hereafter more fully set forth.

7. POLITICAL SLUSH FUND. Goodyear established and utilized political slush funds into which it diverted corporate assets in excess of One Million Dollars ($1,000,000.00), which were used for illegal purposes including the avoidance of a government investigation, discontinuance of production and a recall campaign of certain multi-piece rims. During the government investigation from 1969 through 1973, Goodyear made illegal domestic political payments, the distribution of which was directed by company executives, which payments were utilized to influence the aforesaid government investigation and proposed action.

8. FALSE REPRESENTATIONS AS TO THE NUMBER AND SEVERITY OF RIM EXPLOSIONS. Goodyear deliberately and fraudulently understated and minimized the number of known incidents, claims and lawsuits involving multi-piece rims in testimony and official responses to inquiries by the United States Department of Transportation, investigatory departments of various states and in various lawsuits in state and federal district courts.

9. VEHICLE MOUNTING AND DEMOUNTING HAZARD. Goodyear deliberately and fraudulently withheld information from the United States Department of Transportation, the investigatory departments of various states and the federal district courts and state trial courts that multi-piece truck rims of the type which blinded plaintiff have a proclivity for explosions during handling, mounting and demounting on vehicles thereby causing potentially lethal explosions and injury or death to any person attempting to

handle, mount or demount an inflated multi-piece rim assembly onto or from a vehicle.

10. WARNING STICKERS. Goodyear deliberately and fraudulently conspired with others at secret and clandestine meetings at the Mayflower Hotel in Washington, D.C. and elsewhere to remain silent and avoid adequate warning to users of multi-piece truck rim components by failing to attach warning stickers to rims, by representing that it was impossible to devise a sticker which would be prominent and would adhere to new and existing rims, by abandoning their warning sticker projects for multi-piece rims and encouraging, agreeing and conspiring with other rim manufacturers to abandon existing and proposed warning sticker programs, all for the purposes of avoiding approximately $1,000,000.00 in expense and avoiding the admission of liability for products liability rim explosion cases at the expense of human life and health including that of the plaintiff.

11. SAFETY CAGE AS THE SOLUTION. Goodyear deliberately and fraudulently misrepresented that safety cages and other restraining devices would effectively eliminate death and injury from multi-piece rim explosions although they knew that numerous explosions resulting in blinding, maiming, crippling and death were and are occurring during vehicular mounting and demounting, while vehicles are in service and during routine tire maintenance, inflation and deflation of rim assemblies mounted on vehicles, and Goodyear deliberately and fraudulently failed to advise and acknowledge that safety cages and restraining devices are useless at such times and would not avoid numerous rim explosion occurrences involving death and serious injury.

12. WARNING AND MATCHING LITERATURE AS THE SOLUTION. Goodyear deliberately and fraudulently

misrepresented that printed warning materials and rim component matching literature were an alternative solution to the multi-piece rim explosion hazard although Goodyear knew that such printed literature and materials rarely reached the ultimate users and tire busters, and that explosion injuries and death would continue regardless of such literature and materials because defendant never intended to distribute the literature promulgated by the federal government, failed to distribute such literature, knew that the literature was difficult or impossible for most users to comprehend, and even if disseminated and comprehended that compliance was impossible, impractical and ineffective in preventing death and injury.

13. RUN FLAT HAZARD. Goodyear deliberately and fraudulently failed to disclose the results of tests and complaints indicating that a majority of multi-piece rim assemblies, including the type which injured plaintiff, become hazardous whenever the tire assembled thereon becomes deflated on the highway causing an unreasonable risk to the public which, if fully known to the National Highway Traffic Safety Administration, would have resulted in the promulgation of federal motor vehicle safety standards, recall and retrofit which would have eliminated the subject rim prior to the time it injured plaintiff.

14. DISTRIBUTION OF WARNING LITERATURE AND CONSPIRACY OF SILENCE. Goodyear deliberately and fraudulently withheld information, instructional and warning material and failed to fulfill their promises to the Department of Transportation and their obligations to the public to distribute warning literature and rim matching information.

15. MISMATCH HAZARD. Goodyear deliberately and fraudulently misrepresented to the National Highway Traffic Safety Administration, the investigative departments

of various states, and the state and federal courts that numerous components of one type or designation can be safely matched with rim components of other types and designation distributed by different manufacturers, that the configuration and specifications of the same or similar rims component parts of the same and of different manufacturers are compatible and safe, and that all extant rims are clearly, unequivocally and completely identified as to manufacturer, type and size so that the users thereof can safely match them when defendant knew that such representations were false.

16. SINGLE-PIECE RIM AS THE SAFE SOLUTION. Goodyear deliberately and fraudulently failed to disclose that it had developed during the 1950s a completely safe single-piece drop center rim for usage on all trucks which if promoted would entirely eliminate the rim explosion hazard and conspired with others to keep silent with respect to the development of the state of the art in order to maintain its position in the truck market, which activity was motivated solely by profit and at the expense of life and health of the public, including the plaintiff.

17. The plaintiff, the United States Department of Transportation, authorities in the several States and the general public reasonably relied on Goodyear to make full and honest disclosures with respect to the design, production, distribution, warning and instruction of their truck rims and as a result of the foregoing fraudulent misrepresentations plaintiff sustained blinding and crippling injuries to the actual damage of plaintiff in the sum of Two Million Five Hundred Thousand Dollars ($2,500,000.00).

18. As a result of the foregoing fraudulent misrepresentations of Goodyear, plaintiff is entitled to exemplary damages in the sum of Twenty-Five Million Dollars ($25,000,000.00).

19. Most of the acts, omissions and misrepresentations of defendant Goodyear occurred or were planned at defendant's principal place of business in Akron, Ohio. Plaintiff requests that the Court take judicial notice of the law of the State of Ohio which provides for the recovery of exemplary damages against a corporation for the tortious acts of its agents within the scope of their employment for their failure to redesign or recall a product or to warn the public when they knew the design of the product posed a grave danger to the lives or property of consumers.

WHEREFORE, plaintiff prays judgment against defendants in Count II in the sum of Two Million Five Hundred Thousand Dollars ($2,500,000.00) actual damages and Twenty-Five Million Dollars ($25,000,000.00) exemplary damages and his costs herein expended.

Lehman, Guilfoyle & Hinkle,
By /s/ William A. Guilfoyle,
William K. Guilfoyle,

Niewald, Risjord & Waldeck,
By /s/ John C. Risjord,
John C. Risjord,
Attorneys for Plaintiff.

DEMAND FOR TRIAL BY JURY
Plaintiff demands trial
by jury in Wichita, Kansas.

Complaint.

In the United States District Court for the Western District of Missouri, Western Division.

The Firestone Tire & Rubber Company, an Ohio corporation, Plaintiff, v. The Home Insurance Company, a New York corporation, Defendant. No. 79-0961-CV-W-1.

Filed: Oct. 25, 1979.

COMPLAINT

1. Plaintiff, The Firestone Tire & Rubber Company (''Firestone'') is a corporation incorporated under the laws of the State of Ohio with its principal place of business in the State of Ohio. Defendant, The Home Insurance Company (''Home''), is a corporation incorporated under the laws of the State of New York with its principal place of business in the State of New York. The amount in controversy exceeds, exclusive of interest and costs, $10,000.

2. From time to time until approximately December, 1975, Home and Firestone were parties to excess insurance contracts wherein Home undertook to furnish product liability coverage to Firestone (a copy of the most recent of said contracts is attached hereto as ''Exhibit A''). The prior contracts were substantially similar to the Exhibit A contract.

3. Following is a partial list of products liability actions which have been filed against Firestone in this Court including the date of filing and the alleged date of accident:

	Date Filed	Alleged Date of Accident
Butler v. The Firestone Tire & Rubber Company, et al.	Aug., 1978	May 1, 1975

Goodwin v. The Firestone Tire & Rubber Company, et al.	June, 1976	May 22, 1973
Rodriquez v. The Firestone Tire & Rubber Company, et al., (subsequently transferred to the Southern District of Texas)	Aug., 1978 (date of Second Amended Complaint)	Sept. 23, 1975

The plaintiffs' attorney in each case is John C. Risjord (''Risjord'') of Kansas City, Missouri, a member of the bar of this Court. For convenience, the above actions shall be referred to as the ''Risjord actions.''

4. Assuming the correctness of the allegations of the Risjord actions, they all, by date of occurrence and *ad damnum* fall within the coverage of the Exhibit A contract.

5. The Risjord actions contain highly unusual and inflammatory allegations including requests for punitive damages (the complaints in each are attached hereto as Composite Exhibit B).

6. In two of the Risjord actions (*Butler* and *Goodwin*) Home has served ''reservation of rights'' letters on Firestone (attached Composite Exhibit C) disclaiming coverage for both punitive and compensatory damages, in part because the complaints alleged intentional tort or misconduct. Firestone has pending approximately 100 cases involving bus and truck wheels and rim components, many of which are under the Home coverage. Home has never served such a notice in a wheel or rim case except in the Risjord actions.

7. Pursuant to the provisions of the Exhibit A contract and preceding contracts Home has demanded and received access to all Firestone rim and wheel case files, documents, reports, and other information concerning such cases for

which Home has coverage, and Home representatives have met with and discussed Firestone's defense strategies, positions and tactical problems with numerous of Firestone's attorneys regarding the handling of those cases.

8. Risjord also serves as Lead and Liaison Counsel for all plaintiffs in consolidated proceedings in this Court bearing number MDL-362. MDL-362 includes the Risjord actions as well as approximately 17 other wheel and rim cases against Firestone; the number changes because of tag-alongs. Several of those cases are within Home coverage.

9. Risjord currently represents Home in at least one matter unrelated to Firestone or wheels and rims. His firm, Messrs. Niewald, Risjord & Waldeck of Kansas City, Missouri, has held out Home as its most important client continuously for approximately 20 years.

10. This Court has found that the foregoing legal representations constitute a conflict of interests by Risjord and an "appearance of impropriety." As an alternative to Mr. Risjord's disqualification, this Court has given Mr. Risjord the opportunity of obtaining the consents of all parties involved. Risjord obtained from Home a limited consent permitting him to continue representing it in the action referred to in the preceding paragraph. Such consent does not purport to allow Risjord to sue Firestone in Home insured cases or to act as lead counsel to all other counsel in all of the other Home insured cases.

11. Home has known of Risjord's conflict of interests since it was created and has also known that Firestone has advised the Home that, due to the Home's fiduciary obligation to Firestone, and its knowledge of Firestone's defense strategies, capabilities and settlement attitudes, Firestone expected the Home to join with it in the disqualification of Risjord due to the conflicts hereinbefore alleged. Despite

such fact, the Home has taken no action whatever to prevent such conflict from continuing. This failure constitutes a serious, intentional and malicious breach by Home of its insurance and fiduciary duties to Firestone created by Exhibit A and preceding contracts. One inference to be drawn from this failure (and consequent breach) is that Home is in accord with and wishes to aid Risjord's attempts to show that Firestone has committed intentional torts not covered by Home's policies, notwithstanding the fact that such a theory may not be in the best interest of the plaintiffs. The relationship creates a gross and significant opportunity for collusion and misuse of the information which Home has learned and demanded from Firestone in the defense of its cases.

12. There is presently pending before this Court Firestone's motion to have Risjord held in contempt for failing to comply with this Court's order of August 16, 1979. If the Court agrees that the Home consent was not in compliance with its order, there is a danger that Home will provide a broader consent thereby enabling Risjord to continue in the litigation and his pursuance of an intentional tort theory which Home claims it does not cover. It is Firestone's belief that Home will provide another broader consent. This would constitute a severe, intentional and malicious breach by Home of its fiduciary duties to Firestone created by Exhibit A and preceding contracts and would cause irreparable injury to Firestone.

WHEREFORE, Firestone requests the following relief:

A. That the Court adjudge and declare that Home's inaction with respect to Risjord's conflict of interests is a breach of its fiduciary duty to its insured, Firestone.

B. That the Court adjudge and declare that the giving by Home of a consent which complies with this Court's

order of August 16, 1979 would constitute a breach by Home of its fiduciary duty to Firestone.

C. That the Court adjudge and declare that because the aforesaid breach and intentional and malicious conduct Home is barred from disclaiming compensatory and/or punitive damage coverage in any case falling within the Exhibit A or preceding contracts.

D. That the Court grant a preliminary injunction preventing Home from giving a consent which complies with this Court's order of August 16, 1979.

E. That the Court enter an Order making said preliminary injunction permanent.

F. That the Court enter judgment in favor of Firestone and against Home as follows:

i. all actual damages sustained by Firestone as a result of Home's breach;

ii. punitive damages (because of the intentional and malicious nature of Home's breach) in such amount as the Court may deem necessary (based upon Home's assets and income) to provide a deterrent against such conduct in the future by Home and those similarly situated.

William Freivogel,
Robert W. Sacoff,
Monica Carroll,
Ross, Hardies, O'Keefe,
Babcock & Parsons,

William H. Sanders,
James M. Warden,
Blackwell, Sanders, Matheny,
Weary & Lombardi,

By /s/ William H. Sanders
Attorneys for The Firestone Tire & Rubber Company.

Exhibit A.

THE HOME INSURANCE COMPANY.

New Hampshire

ITEM 1. Insured's Name and Mailing Address. The Firestone Tire & Rubber Company (See General Endorsement No. 1) 1200 Firestone Parkway, Akron, Ohio. Inception (Mo. Day Yr.): 12/1/75. Expiration (Mo. Day Yr.):1/1/76. Years: Time. Producer No. 07906. CPC 261.

NEW YORK OFFICE, Producer, Marsh & McLenna, Inc., One Woodward Ave., Detroit, Michigan.

FROM: December 1, 1975, 12:01 AM, TO: January 1, 1976, Standard Time at the address of the Named Insured as stated herein.

ITEM 2. LIMITS OF LIABILITY (As Per Insuring Agreement No. 2)

LIMIT IN ALL IN RESPECT OF EACH OCCURRENCE $ 2,000,000.00.

LIMIT IN THE AGGREGATE FOR EACH ANNUAL PERIOD WHERE APPLICABLE $ 2,000,000.00.

ITEM 3. PREMIUMS

THE PREMIUM IS BASED UPON Flat Charge During the Policy Period; MINIMUM PREMIUM, $71,250.00; ADVANCED PREMIUM, $71,250.00

In Witness Whereof, the said THE HOME INSURANCE COMPANY, MANCHESTER, NEW HAMPSHIRE has caused these Presents to be signed by its President and attested by its Secretary, in the City of Manchester, New Hampshire, and this policy is made and accepted upon the above express conditions, but shall not be valid unless countersigned by a duly authorized Representative of the Company at place of issue.

/s/ Joseph F. Quinn
Secretary

/s/ R. H. Tullen. Jr.
President

Date 1/15/76eg

SECTION A
THE HOME INSURANCE COMPANY'S
MANUSCRIPT EXCESS LIABILITY POLICY

(A stock insurance company herein called the company)

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the insuring agreements, limits of liability, definitions, exclusions, conditions, and other terms of this policy:

INSURING AGREEMENTS

I. COVERAGE

The Company hereby agrees, subject to the limitations, terms and conditions hereinafter mentioned, to indemnify the Insured for all sums which the Insured shall be obligated to pay by reason of the liability

(a) imposed upon the Insured by law,

or (b) assumed under contract or agreement by the Named Insured and/or any officer, director, stockholder, partner or employee of the Named Insured, while acting in his capacity as such,

for damages, direct or consequential and expenses, all as more fully defined by the term "ultimate net loss" on account of:

(i) Personal Injuries, including death at any time resulting therefrom,

(ii) Property Damage,

(iii) Advertising Liability,

caused by or arising out of each occurrence happening anywhere in the world.

II. LIMIT OF LIABILITY

The Company shall only be liable for the ultimate net loss the excess of either

(a) the limits of the underlying insurances as set out in the attached schedule in respect of each occurrence covered by said underlying insurances.

or (b) $25,000 ultimate net loss in respect of each occurrence not covered by underlying insurances,

(hereinafter called the "underlying limits"):
and then only up to a further sum as stated in Item 2 of the Declarations in all in respect of each occurrence—subject to a limit as stated in Item 2 of the Declarations in the aggregate for each annual period during the currency of this policy, separately in respect of Products Liability and in respect of Personal Injury (fatal or non-fatal) by Occupational Disease sustained by any employees of the Insured.

In the event of reduction or exhaustion of the agregate limits of liability under said underlying insurance by reason of losses paid thereunder, this policy shall

(1) in the event of reduction pay the excess of the reduced underlying limit

(2) in the event of exhaustion continue in force as underlying insurance.

The inclusion or addition hereunder of more than one Insured shall not operate to increase the Company's limit of liability.

THIS POLICY IS SUBJECT TO THE FOLLOWING DEFINITIONS:

1. INSURED

Named Insured: As stated in Item 1 of the Declarations forming a part hereof and/or subsidiary, associated, affiliated companies or owned and controlled companies as now or hereafter constituted and of which prompt notice has been given to the Company (Hereinafter called the "Named Insured").

The unqualified word "Insured", wherever used in this policy, includes not only the Named Insured but also:—

(a) any officer, director, stockholder, partner or employee of the Named Insured, while acting in his capacity as such, and any organization or proprietor with respect to real estate management for the Named Insured;

(b) any person, organization, trustee or estate to whom the Named Insured is obligated by virtue of a written contract or agreement to provide insurance such as is afforded by this policy, but only in respect of operations by or on behalf of the Named Insured or of facilities of the Named Insured or used by them;

(c) any additional insured (not being the Named Insured under this policy) included in the Underlying insurances, subject to the provisions in Condition B; but not for broader coverage than is available to such additional Insured under any underlying insurances as set out in attached Schedule;

(d) with respect to any automobile owned by the Named Insured or hired for use in behalf of the Named Insured, or to any aircraft owned by or hired for use in behalf of the Named Insured, any person while using such automobile or aircraft and any person or organization legally responsible for the use thereof, provided the actual use of the automobile or aircraft is with the permission of the Named Insured. The insurance extended by this sub-division (d), with respect to any person or organization other than the Named Insured, shall not apply—

1. to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service sta-

tion, or public parking place, with respect to any occurrence arising out of the operation thereof;

2. to any manufacturer of aircraft, engines, or aviation accessories, or any aviation sales or service or repair organization or airport or hangar operator or their respective employees or agents with respect to any occurrence arising out of the operation thereof;

3. with respect to any hired automobile or aircraft, to the owner thereof or any employee of such owner. This sub-division (d) shall not apply if it restricts the insurance granted under sub-division (c) above.

2. PERSONAL INJURIES

The term ''Personal Injuries'' wherever used herein means bodily injury, mental injury, mental anguish, shock, sickness, disease, disability, false arrest, false imprisonment, wrongful eviction, detention, malicious prosecution, discrimination (except where it is a violation of a statute or regulation prohibiting such) humiliation; also libel, slander or defamation of character or invasion of rights of privacy, except that which arises out of any Advertising activities.

3. PROPERTY DAMAGE

The term ''Property Damage'' wherever used herein shall mean loss of or direct damage to or destruction of tangible property (other than property owned by the Named Insured).

4. ADVERTISING LIABILITY

The term ''Advertising Liability'' wherever used herein shall mean:—

(1) Libel, slander or defamation;

(2) Any infringement of copyright or of title or of slogan;

(3) Piracy or unfair competition or idea misappropriation under an implied contract;

(4) Any invasion of right of privacy;

committed or alleged to have been committed in any advertisement, publicity article, broadcast or telecast and arising out of the Named Insured's Advertising activities.

5. OCCURRENCE

The term "occurrence" wherever used herein shall mean an accident or a happening or event or a continuous or repeated exposure to conditions which unexpectedly and unintentionally results in personal injury, property damage or advertising liability during the policy period. All such exposure to substantially the same general conditions existing at or emanating from one premises location shall be deemed one occurrence.

6. ULTIMATE NET LOSS

The term "Ultimate Net Loss" shall mean the total sum which the Insured, or any company as his insurer, or both, become obligated to pay by reason of personal injury, property damage or advertising liability claims, either through adjudication or compromise, and shall also include hospital, medical and funeral charges and all sums paid as salaries, wages, compensation, fees, charges and law costs, premiums on attachment or appeal bonds, interest, expenses for doctors, lawyers, nurses and investigators and other persons, and for litigation, settlement, adjustment and investigation of claims and suits which are paid as a consequence of any occurrence covered hereunder, excluding only the salaries of the Insured's or of any underlying insurer's permanent employees.

The Company shall not be liable for expenses as aforesaid when such expenses are included in other valid and collectible insurance.

7. AUTOMOBILE

The term ''automobile'', wherever used herein, shall mean a land motor vehicle, trailer or semi-trailer.

8. AIRCRAFT

The term ''aircraft'' wherever used herein, shall mean any heavier than air or lighter than air aircraft designed to transport persons or property.

9. PRODUCTS LIABILITY

The term ''Products Liability'' means

(a) Liability arising out of goods or products manufactured, sold, handled or distributed by the Named Insured or by others trading under his name if the occurrence occurs after possession of such goods or products has been relinguished to others by the Named Insured or by others trading under his name and if such occurrence occurs away from premises owned, rented or controlled by the Named Insured; provided such goods or products shall be deemed to include any container thereof, other than a vehicle, but shall not include any vending machine or any property, other than such container, rented to or located for use of others but not sold;

(b) Liability arising out of operations, if the occurrence occurs after such operations have been completed or abandoned and occurs away from premises owned, rented or controlled by the Named Insured; provided operations shall not be deemed incomplete because improperly of defectively performed or because further operations may be required pursuant to an agreement; provided further the following shall not be deemed to be ''operations'' within the meaning of this paragraph; (i) pick-up or delivery, except from or onto a railroad car, (ii) the maintenance of vehicles, owned or used by or in behalf of the insured, (iii) the existence of

tools, uninstalled equipment and abandoned or unused materials.

10. ANNUAL PERIOD

The term "each Annual Period" shall mean each consecutive period of one year commencing from the inception date of this Policy.

THIS POLICY IS SUBJECT TO THE FOLLOWING EXCLUSIONS:

This policy shall not apply:—

(a) to any obligation for which the Insured or any company as its insurer may be held liable under any Workmen's Compensation, unemployment compensation or disability benefits law provided, however, that this exclusion does not apply to liability of others assumed by the Names Insured under contract or agreement;

(b) to claims made against the Insured;

(i) for repairing or replacing any defective product or products manufactured, sold or supplied by the Insured or any defective part or parts thereof nor for the cost of such repair or replacement;

(ii) for the loss of use of any such defective product or products or part or parts thereof;

(iii) for improper or inadequate performance, design or specification; but nothing herein contained shall be construed to exclude claims made against the Insured for personal injuries or property damage (other than damage to the product of the Insured) resulting from improper or inadequate performance design or specification;

(c) with respect to advertising activities, to claims made against the Insured for:

(i) failure or performance of contract, but this shall not relate to claims for unauthorized appropriation of ideas based upon alleged breach of an implied contract;

(ii) infringement of registered trade mark, service mark or trade name by use thereof as the registered trade mark, service mark or trade name of goods or services sold, offered for sale or advertised, but this shall not relate to titles or slogans;

(iii) incorrect description of any article or commodity;

(iv) mistake in advertised price;

(d) except in respect of occurrences taking place in the United States of America its territories or possessions, or Canada, to any liability of the Insured directly or indirectly occasioned by, happening through or in consequences of war, invasion, acts of foreign enemies, hostilities, (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalization or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

Except insofar as coverage is available to the Insured in the underlying insurances as set out in the attached Schedule, this policy shall not apply:

(e) to liability of any insured hereunder for assault and battery committed by or at the direction of such Insured except liability for Personal Injury or Death resulting from any act alleged to be assault and battery committed for the purpose of preventing or eliminating danger in the operation of aircraft, or for the purpose of preventing personal injury or property damage; it being understood and agreed that this exclusion shall not apply to the liability of the Named Insured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(f) with respect to any aircraft owned by the Insured except liability of the Named Insured for aircraft not owned by them; it being understood and agreed that this exclusion shall not apply to the liability of the Named Insured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(g) with respect to any watercraft owned by the insured, while away from premises owned, rented or controlled by the Insured, except liability of the Named Insured for watercraft not owned by them; it being understood and agreed that this exclusion shall not apply to the liability of the Named Insured for personal injury to their employees, unless such liability is already excluded under Exclusion (a) above;

(h) to any employee with respect to injury to or the death of another employee of the same Employer injured in the course of such employment.

THIS POLICY IS SUBJECT TO THE FOLLOWING CONDITIONS:—PREMIUM

The premium for this policy shall be computed on the basis set forth under Item No. 3 of the policy declarations.
Upon expiration of this policy or its termination during the policy period, the earned premium shall be computed as thus defined. If the earned premium thus computed is more than the advance premium paid, the named insured shall immediately pay the excess to the company; if less, the company shall return the difference to the named insured; but the company shall receive and retain the annual minimum premium for each twelve (12) months of the policy period.

In the event of additional Insureds being added to the coverage under the Underlying Insurance during currency hereof prompt notice shall be given to The Company and

if an additional premium has been charged for such addition on the Underlying Insurances. The Company shall be entitled to charge an appropriate additional premium hereon.

PRIOR INSURANCE AND NON CUMULATION OF LIABILITY.

It is agreed that if any loss covered hereunder is also covered in whole or in part under any other excess policy issued to the Insured prior to the inception date hereof the limit of liability hereon as stated in Item 2 of the Declarations shall be reduced by any amounts due to the Insured on account of such loss under such prior insurance.

Subject to the foregoing paragraph and to all the other terms and conditions of this policy in the event that personal injury or property damage arising out of an occurrence covered hereunder is continuing at the time of termination of this policy. The Company will continue to protect the Insured for liability in respect of such personal injury or property damage without payment of additional premium.

D. SPECIAL CONDITIONS APPLICABLE TO OCCUPATIONAL DISEASE

As regards personal injury (fatal or non-fatal) by occupational disease, sustained by an employee of the Insured, this policy is subject to the same warranties, terms and conditions, (except as regards the premium, the amount and limits of liability and the renewal agreement, if any) as are contained in or as may be added to the underlying insurances prior to the happening of an occurrence for which claims is made hereunder.

E. INSPECTION AND AUDIT

The Company shall be permitted, at all reasonable times during the policy period to inspect the premises,

plants; machinery and equipment used in connection with the Insured's business, trade or work, and to examine the Insured's books and records at any time during the currency hereof and within one year after final settlement of all claims so far as the books and records relate to any payments made on account of occurrences happening during the term of this policy.

F. CROSS LIABILITY

In the event of claims being made by reason of personal injuries suffered by any employee or employees of one Insured hereunder for which another Insured hereunder is or may be liable, then this policy shall cover such Insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each Insured hereunder.

In the event of claims being made by reason of damage to property belonging to any Insured hereunder for which another Insured is, or may be liable then this policy shall cover such Insured against whom a claim is made or may be made in the same manner as if separate policies had been issued to each Insured hereunder.

Nothing contained herein shall operate to increase Company's limit of liability as set forth in Insuring Agreement II.

G. NOTICE OF OCCURRENCE

Whenever the Insured has information from which the Insured may reasonably conclude that an occurrence covered hereunder involves injuries or damages which in the event that the Insured should be held liable, is likely to involve this policy, notice shall be sent to the Company as soon as practicable, provided, however, that failure to give notice of any occurrence which at

the time of its happening did not appear to involve this policy but which, at a later date, would appear to give rise to claims hereunder, shall not prejudice such claim.

H. ASSISTANCE AND CO-OPERATION

The Company shall not be called upon to assume charge of the settlement or defense of any claim made or suit brought or proceeding instituted against the Insured but The Company shall have the right and shall be given the opportunity to associate with the Insured or the Insured's underlying insurers, or both, in the defense and control of any claim, suit or proceeding relative to an occurrence where the claim or suit involves or appears reasonably likely to involve The Company, in which event, the Insured and The Company shall co-operate in all things in the defense of such claim, suit or proceeding.

I. APPEALS

In the event the Insured or the Insured's underlying insurers elect not to appeal a judgment in excess of the underlying limits, The Company may elect to make such appeal at their cost and expense, and shall be liable for the taxable costs and disbursements and interest incidental thereto, but in no event shall the liability of The Company for ultimate net loss exceed the amount set forth in Insuring Agreement II for any one occurrence and in addition the cost and expense of such appeal.

J. LOSS PAYABLE

Liability under this policy with respect to any occurrence shall not attach unless and until the Insured, or the Insured's underlying insurer, shall have paid the amount of the underlying limits on account of such occurrence. The Insured shall make a definite claim for

any loss for which the Company may be liable under the policy within twelve (12) months after the Insured shall have paid an amount of ultimate net loss in excess of the amount borne by the Insured or after the Insured's liability shall have been fixed and rendered certain either by final judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and The Company. If any subsequent payments shall be made by the Insured an account of the same occurrence, additional claims shall be made similarly from time to time. Such losses shall be due and payable within thirty (30) days after they are respectively claimed and proven in conformity with this policy.

K. BANKRUPTCY AND INSOLVENCY

In the event of the bankruptcy or insolvency of the Insured or any entity comprising the Insured, The Company shall not be relieved thereby of the payment of any claims hereunder because of such bankruptcy or insolvency.

L. OTHER INSURANCE

If other valid and collectible insurance with any other insurer is available to the Insured covering loss also covered by this policy, other than insurance that is in excess of the insurance afforded by this policy, the insurance afforded by this policy shall be in excess of and shall not contribute with such other insurance. Nothing herein shall be construed to make this policy subject to the terms, conditions and limitations of other insurance.

M. SUBROGATION

Inasmuch as this policy is "Excess Coverage", the Insured's right of recovery against any person or other

entity cannot be exclusively subrogated to the Company. It is, therefore, understood and agreed that in case of any payment hereunder, the Company will act in concert with all other interests (including the Insured) concerned, in the exercise of such rights of recovery. The apportioning of any amounts which may be so recovered shall follow the principle that any interests (including the Insured) that shall have paid an amount over and above any payment hereunder, shall first be reimbursed up to the amount paid by them; the Company is then to be reimbursed out of any balance then remaining up to the amount paid hereunder; lastly, the interests (including the Insured) of whom this coverage is in excess are entitled to claim the residue, if any. Expenses necessary to the recovery of any such amounts shall be apportioned between the interests (including the Insured) concerned, in the ratio of their respective recoveries as finally settled.

N. CHANGES

Notice to or knowledge possessed by any person shall not effect a waiver or change in any part of this policy or estop The Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by The Company.

O. ASSIGNMENT

Assignment of interest under this policy shall not bind The Company unless and until their consent is endorsed hereon.

P. CANCELLATION

This policy may be cancelled by the named insured by mailing to the company written notice stating when thereafter the cancellation shall be effective. This pol-

icy may be cancelled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than 30 days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

Q. MAINTENANCE OF UNDERLYING INSURANCE

It is a condition of this policy that the policy or policies referred to in the attached "Schedule of Underlying Insurances" shall be maintained in full effect during the currency of this policy except for any reduction of the aggregate limit or limits contained therein solely by payment of claims in respect of accidents and/or occurrences occurring during the period of this policy. Failure of the Insured to comply with the foregoing shall not invalidate this policy but in the event of such failure, the Company shall only be liable to the same extent as they would have been had the Insured complied with the said condition.

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Authorized Representative

Non-Premium Endorsement, Endorsement No. Section A.

Issued by:—The Home Insurance Company, POLICY NUMBER, HEC 9 20 85 90, Named Insured: The Firestone Tire & Rubber Co., EFFECTIVE DATE AND TIME OF ENDORSEMENT: 12/1/75, DATE PREPARED: 1/15/76, PRODUCER: Marsh & McLennan, Inc., Producer No. OPC 07906-261.

It is agreed that this policy is hereby amended as indicated. All other terms and conditions of this policy remain unchanged.

In consideration of the premium charged, it is agreed that inasmuch as the following coverages:

Comprehensive General Liability, Products Liability and Automobile Liability are self insured (no primary being in force) then the following wording applies:

Where reference in the Policy is made to Underlying Insurance, such reference is further extended to include "self insurance". Otherwise all other remaining definitions, conditions and exclusions apply to these coverages.